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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION AND EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, APPELLANTS,

vs.

GEORGE P. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

FILED AUGUST 26, 1944.

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IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

No. 9501

In Re: Tax Assessments Against Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building and Loan Associaton and Empire Federal Savings & Loan Association

Order Allowing Appeal—May 17, 1943

On a former day, to-wit, August 21st, 1942, came again the petitioners, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, by Koontz & Koontz and W. Elliott Neffen, its attorneys, and presented to the Court a petition praying for an appeal from a decree of the Circuit Court of Kanawha County pronounced in this cause on the 23rd day of December, 1941, with the record therein accompanying the petition, which being seen and inspected, the appeal prayed for is granted by a majority of the Court; but, it is not to take effect until the petitioners, or some person or persons for them shall have given bond before the Clerk of the Circuit Court of Kanawha County [fol. b] with good security to be approved by said Clerk in the penalty of two hundred dollars and conditioned according to law. Judge Fox would refuse the appeal.

No. 9501

IN THE

SUPREME COURT OF APPEALS

OF

WEST VIRGINIA

CHARLESTON

In the Matter of Tax Assessments Against

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION,

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION,

WEST VIRGINIA BUILDING & LOAN ASSOCIATION,

and

EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,
Petitioners,

vs.

GEORGE P. ALDERSON,
State Tax Commissioner of West Virginia.

FROM THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA.

PETITION FOR APPEAL

To Your Honors, the Judges of the Supreme Court of Appeals of West Virginia:

Your petitioners, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Sav-

ings & Loan Association, respectfully represent that they, and each of them, are aggrieved by a final decree and order entered by the Circuit Court of Kanawha County, West Virginia, on the 23rd day of December, 1941 (R. p. 316), upon an appeal to that Court by George P. Alderson, State Tax Commissioner of the State of West Virginia, from an order of the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization of said Kanawha County, entered on July 18, 1941, on which date the said Board of Review and Equalization reduced the valuations, respectively, fixed as of January 1, 1941, on the properties of each of your petitioners, and the said Circuit Court, by its final decree and order aforesaid, reversed the action of the said Board of Review and Equalization and restored the amounts fixed by the Assessor of Kanawha County, as directed by the State Tax Commissioner.

LAW INVOLVED

The law of West Virginia, as shown by Chapter 11, Article 3, Section 14a, as amended by Chapter 118, Acts 1939 of the West Virginia Legislature, provides a method for equitable treatment for assessing the properties of federal savings and loan associations and building and loan associations, your petitioners being within that group. The law provides that the *capital* of such associations "as represented or evidenced by the investment shares and investment accounts in such association shall be assessed at its true and actual value, *according to the rules prescribed by this chapter* * * *."

Code, West Virginia, 11-3-1, provides: "All property shall be assessed annually as of the first day of January at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is us-

ually sold, and not the price which might be realized if such property were sold at a forced sale, * * *."

Code, West Virginia, 11-3-14a, amended by Chapter 118, Acts 1939, further provides for certain exemptions and elements to be considered in ascertaining the "true and actual values" of federal savings and loan associations and building and loan associations. The law provides for excluding shares and accounts held by the United States government or any of its agencies in determining the assessment (which was done in this case). The law further provides that "the *real* and actual value of such capital, represented by the *market* value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain * * *," (Underscoring ours). The law, farther on in the same section, further provides: "The real estate of any such building and loan or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the *market* value of such investment shares and investment accounts" (which was done in this case by the formula used by both the Assessor of Kanawha County and the office of the State Tax Commissioner). And, then the law provides: "* * * but in ascertaining the *true and actual* value of such *capital* as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration *all earned reserves and undivided profits* of any such association." (All underscoring ours).

(NOTE: For convenience, the Record is referred to as "R. p. " and the transcript of the testimony as "Tr. Ev. p. ").

EVIDENCE SHOWING METHOD OF ASCERTAINING ASSESSED VALUATION OF ALL PROPERTIES IN KANAWHA COUNTY

The property of your petitioners is classified in the group known as Class I, as defined by Section 1, Article X of the Constitution of West Virginia.

Mr. Garland F. Wilkinson, chief deputy assessor of Kanawha County, West Virginia, testified on behalf of your petitioners. (Tr. Ev. pp. 4-42; 107-109; cross examination, 117-159; re-direct examination, 159-162; rebuttal, 201-205).

This witness gave a complete statement of the method of assessing the true and actual valuations of property,—real, personal and chattels real,—in Kanawha County. He receives his instructions from Mr. J. H. Abbot, the Assessor of Kanawha County (Tr. Ev. 20). He supervises the field deputies and makes assessments generally for corporations and businesses, and issues instructions to the field deputies as to the ways, means and methods of determining the true and actual valuation of property for assessment purposes (Tr. Ev. 17-18). He described the different kinds of property grouped in the Class I classification, fixed by Section 1, Article X of the Constitution of West Virginia (known as the "Tax Limitation Amendment"). Among these are the investment shares or stocks of these petitioners (Tr. Ev. 18-19). His *unrefuted* testimony is that "money is valued, of course, at 100%; accounts receivable at about 70% unless they are installment accounts and they are valued at approximately 65%;" and "livestock is valued at approximately 50% of the purchase value;" and "NOTES *are assessed at approximately 70%;*" and "bonds are assessed at approximately 70% unless their market value is less. Then, of course, if the market value of bonds is less than 70% we generally factor them slightly under their market value;" and *that by 70% was meant 70% of the face value.* (Tr. Ev. 19-20).

With respect to Class II property, consisting entirely of real estate, with improvements thereon, used for residential purposes or farms occupied by the owner or bona fide tenants, new buildings are valued from 50% to 60% of the total amount of the construction cost, and after describing the methods used to determine the true and actual value, he testified "according to our methods of arriving at the true and actual value it is what I stated, by using about 50 to 60%," meaning a percentage of the true and actual value. Then, the witness stated the location of the property was often considered, in some places the assessed value was about 80% of the true and actual valuation, while in other places in the county it might be as low as 25% of the true and actual valuation. (Tr. Ev. 23-24).

Regarding other property, classified in Classes II and III, he testified that automobiles are assessed at 30% of their Blue Book value, explaining that the Blue Book is used by all car dealers and places a true and actual value on various kinds and classes of automobiles, from which value a 30% discount is taken to arrive at the value used for assessment purposes. (Tr. Ev. 25).

In determining the assessed valuation of gas wells, he testified that the method is prescribed by the office of the State Tax Commissioner, by getting "the 100% value of a gas well and multiplying the gross sales by three and on it we allow a 33 1/3% reduction. This 33 1/3% reduction was agreed by the State Tax Commissioner and the method of arriving at this deduction was *because we do not have other properties in the county assessed at their 100% valuation.* All merchandise, store goods and all equipment of business establishments is assessed at 60% of the book value or inventory." (Tr. Ev. 25-26). (Underscoring ours).

As a part of his testimony, Mr. Wilkinson (Tr. Ev. 40) filed his exhibit, marked "Wilkinson Exhibit No. 10" (R. p. 270), which was Form No. 3-C, of the office of the State Tax Commissioner, setting up the instructions of that offi-

cial as a guide for ascertaining values, which had been in use for several years, and "*we are still trying to follow them*" (Tr. Ev. 41). (Underscoring ours). EXCEPT, however, the witness stated, such instructions were not followed with respect to determining the value of the capital of these petitioners, because of the specific instructions of the State Tax Commissioner (Tr. Ev. 15, 42); and if it had not been for such specific instructions, the valuation of the properties of these petitioners would have been at a percentage of about 30% less than that fixed by the State Tax Commissioner (Tr. Ev. 42).

On cross-examination, Mr. Wilkinson testified that in addition to the provisions of the law (Code, 11-3-14a) requiring the taking into consideration of earned reserves and undivided profits, the office of the State Tax Commissioner added other accounts than those earned and added more than the capital or investment shares or investment accounts (Tr. Ev. 119), and in response to questioning by counsel for the State Tax Commissioner as to how the property of petitioners should be assessed, said (Tr. Ev. 119):

> "Well, I would take the investment shares and investment account, figure their undivided profits and probably their reserves for contingency, and allow 30% discount as an equalization factor to other classes of property *and other properties in the same classification.*"

On re-direct examination, Mr. Wilkinson explained (Tr. Ev. 160, et seq.) how oil wells were valued for assessment purposes, under instructions of the State Tax Commissioner, and thereby such valuations constituted a percentage of their true and actual value. Under such instructions, for the sake of uniformity, oil wells in the year 1940 were, and are now, assessed at $1000. per barrel of average daily production, although the sale price is higher than in previous years when under the method used by the Assessor of Kanawha County such oil wells were assessed at $1500. per

barrel of average daily production, thereby losing in the year 1940 approximately $750,000. valuation in Kanawha County, and the same loss would again occur in the year 1941, by following the instructions of the State Tax Commissioner.

The testimony of Mr. Wilkinson about the method or formula used in assessing the value of gas wells, above referred to and contained in the Transcript of the Evidence, page 25, et seq., was confirmed by Mr. Howard J. Gibson, representing the State Tax Commissioner (Tr. Ev. 162, et seq.). Thereupon, Mr. Wilkinson (Tr. Ev. 164, et seq.) testified, that if the same method of assessing gas wells, used by the assessor, were used by the Board of Public Works of West Virginia in assessing the value of gas wells of public utilities, then the assessed value of the wells of the United Fuel Gas Company in Poca District would be many times higher, and that the assessed valuation as fixed by the Board of Public Works was only about 18% of its true and actual value, if such true and actual value were ascertained by the same formula used for determining the valuation of gas wells owned by others than public utility companies.

The State Tax Commissioner directed that the assessment of the "capital" or property of your petitioners be made by the Assessor of Kanawha County according to the formula prescribed by the Commissioner (Tr. Ev. pp. 15, 42; also, see letter of State Tax Commissioner, Krueger Exhibit No. 1, R. p. 297), and that such method was not to be deviated from "by way of discounts or in any other way or means which will produce different results or assessments than those obtained by such method", which method was shown by certain sheets referred to in said letter and left with each assessor by a representative of the State Tax Commissioner. The chief deputy assessor of Kanawha County, Garland F. Wilkinson, testified (Tr. Ev. 15, 42; R. p. 58, 85) that if it had not been for such specific instructions, the valuation of the properties of these petitioners would have been less than that fixed by the State Tax Commissioner.

The assessment of the petitioner, Charleston Federal Savings & Loan Association (Wilkinson Exhibit No. 1—R. p. 251), as made by the Assessor of Kanawha County upon the specific instructions of the State Tax Commissioner (and which may be taken as typical of the assessments of the other petitioners—Wilkinson Exhibits Nos. 3 and 5—R. pp. 256, 265) was placed at $921,180.00 and was made on the following property basis:

Capital Stock or Shares:		
Investment and Savings Shares, par value $100. (representing privately owned shares)		$ 878,148.67
Government owned shares, par value $100.		375,000.00
Total Free Shares		$1,253,148.67
Other Capital:		
Undivided Profit	$27,011.69	
Reserve for Uncollected Interest	1,280.29	
Deferred Income	32,268.09	
Contingent Fund	12,500.00	
Insurance Reserve	7,000.00	
Total of Other Capital		$ 80,060.07
Total of All Capital		$1,333,208.74
Deductions:		
Assessed value of Real Estate as fixed by Assessor		17,600.00
Net Capital		$1,315,608.74
Net Value per Dollar of Invested Capital: (Divide Net Capital by Total Free Shares)		$ 1.049
Assessed Value of Privately Owned Shares: (Multiply Amount of Privately Owned Shares $878,148.67 by net value per dollar, $1.049)		$ 921,180.00

The County Court of Kanawha County sitting as the Board of Review and Equalization of Kanawha County, by its order entered on July 18, 1941 (R. p. 40), reduced and fixed the assessed valuation of your petitioner, Charleston Federal Savings & Loan Association, at the sum of $639,030.00, which amount was undoubtedly ascertained by said Board of Review and Equalization of Kanawha County accepting the testimony of Garland F. Wilkinson, the Chief Deputy Assessor of Kanawha County, that certain items of "Other Capital," set out above in the table from Wilkinson Exhibit No. 1, should not be considered in arriving at the assessed valuation, and by deducting from the sum of $921,180. the items of "Reserve for Uncollected Interest — $1,280.29" and "Insurance Reserve — $7,000.00," the remainder is the sum of $912,900.00. Taking 30 per cent. of the last sum as an equalizing factor to other classes of property, and other properties in Class I in which the properties of your petitioners are grouped, or, in other words, allowing a percentage of the true and actual value as in the case of other properties in Class I, the assessed valuation, as determined by the Board of Review and Equalization, is found to be the sum of $639,030.00.

On the appeal to the Circuit Court of Kanawha County, that Court reversed the action of the Board of Review and Equalization and restored the valuation at the sum of $921,180.00.

First Question:

CONSIDERATION OF EARNED RESERVES AND UNDIVIDED PROFITS

The Assessor of Kanawha County and the State Tax Commissioner do not agree on the formula to be used in considering the "earned reserves" and the "undivided profits." (Tr. Ev. 119).

Mr. M. Boiarsky, secretary, treasurer and manager of the

Charleston Federal Savings & Loan Association, one of the petitioners, testified (Tr. Ev. 43, et seq.), about the true and actual value of the investment shares, representing the capital. Without contradiction, Mr. Boiarsky testified that the true and actual, and only, market value of the stock of his association is $100.00 per share; that this was true under the charter issued to it by the government of the United States under an Act of Congress, and that the repurchase (or redemption) price of each share had to be $100.00, no more, no less, no matter what the reserves or undivided profits or surplus may be.

In a case in the Circuit Court of Hancock County, West Virginia, on an appeal by the Hancock County Federal Savings and Loan Association from the action of the County Court of Hancock County, ex-officio Board of Review and Equalization of Hancock County, sustaining the assessment fixed by the Assessor of Hancock County, the Circuit Court of Hancock County, as shown by its written opinion dated January 7, 1942, a copy of which is herewith attached to this Petition and asked to be read as a part hereof, reversed both the County Court of Hancock County, sitting as a Board of Review and Equalization, and the Assessor of Hancock County, in considering the items of "Surplus," "Undivided Profits," "Federal Insurance Reserve," and "Uncollected Interest." In short, the action of the Circuit Court of Hancock County is diametrically opposed to the action of the Circuit Court of Kanawha County in this respect, namely, the Hancock County Circuit Court considered the par value of $100.00 per share as the true, actual and market value, whereas the Kanawha County Circuit Court considered the items of "Undivided Profits," "Reserve for Uncollected Interest," "Deferred Income," "Contingent Fund," and "Insurance Reserve" and thereby found the valuation of each investment share of the Charleston Federal Savings & Loan Association to be $104.90 per share, or $4.90 per share more than each share can be sold or purchased on the market; the valuation of each investment

share of the First Federal Savings & Loan Association to be $108.50 per share, or $8.50 per share more than the market value; the valuation of each investment share of the West Virginia Building & Loan Association to be $107.50 per share, or $7.50 per share more than the market value; and the valuation of each investment share of the Empire Federal Savings & Loan Association to be $111.90 per share, or $11.90 per share more than the market value.

Second Question:

DISCRIMINATORY ASSESSMENT

Whatever may be the correct method or formula for ascertaining the *true* and *actual value*, or *real* value, or *market* value, all of which terms are used in Code, 11-3-142, as amended by Chapter 118, Acts 1939, (1) whether it is the par value of $100. per share for the privately owned shares, as testified to by the witness M. Boiarsky (Tr. Ev. 43), and as determined by the Circuit Court of Hancock County (See Appendix to this Petition) in interpreting and construing the statute here involved, in conjunction with the provisions of Code, 11-3-1, by excluding all items designated as "Other Capital," or (2) whether it is the method as prescribed by the State Tax Commissioner (Wilkinson Exhibit No. 1 — R. p. 251), or (3) whether it is the method evolved by the Assessor of Kanawha County (but which he did not use under the express directions of the State Tax Commissioner) by excluding certain items of "Other Capital" and which method was used by the Board of Review and Equalization of Kanawha County, the very important question for consideration is that all property in Kanawha County, in each of the four classes fixed by the Constitutional Tax Limitation Amendment (Sec. 1, Art. X, W. Va. Const.) is assessed by the Assessor of Kanawha County at a percentage, varying as to different kinds of property, of the true and actual value. Thus, the petitioners claim is discriminatory to them, and they are aggrieved

by the final decree of the Circuit Court of Kanawha County in fixing the valuation of their property at the true and actual value according to the method prescribed by the State Tax Commissioner, without giving consideration to the fact that other property in Kanawha County, especially property in the same class, viz. Class I, as that of your petitioners, is placed on the assessment books of Kanawha County at a percentage of the true and actual value.

In other words, assuming but not admitting for considering this question that the method formulated by the State Tax Commissioner is correct for determining the true and actual, or market, or real, value of the property of your petitioners in accordance with the provisions of Code, 11-3-14a, as amended by Chapter 118, Acts 1939, yet your petitioners are entitled to the same consideration as the owners of all other property, especially those whose properties are placed in Class I, by being allowed a percentage of such true and actual value in determining the valuation for assessment purposes. Otherwise, a discrimination is being made against your petitioners, and in violation of the provisions of Section 1, Article X, of the Constitution of West Virginia, providing that "Subject to the exceptions in this section contained" (meaning different levies on different classes of property) "taxation shall be equal and uniform throughout the State," and, further and more particularly, in violation of the provisions of Section 1 of the Fourteenth Amendment to the United States Constitution that "No state * * * shall deny to any person within its jurisdiction the equal protection of the laws."

From the adverse ruling of the Circuit Court of Kanawha County, your petitioners now here seek an appeal. For grounds of appeal, it is respectfully submitted that the said Circuit Court of Kanawha County erred in the following particulars:

1st. The Court erred in finding that the true and actual and market, and real, value of the property of your peti-

tioners for assessment purposes was more than $100. per share of the privately owned shares, or at a value of more than each share of capital, represented by the investment shares, would sell on being voluntarily offered for sale by your petitioners, said finding being contrary to the law and the evidence. Moreover, the finding of the Court in the instant case in this respect is adverse and contrary to, and conflicting with, the action, ruling and finding of the Circuit Court of Hancock County, "In the Matter of Tax Assessments Against Hancock County Federal Savings and Loan Association," decided January 7, 1942, as shown by its written opinion attached to this Petition as an Appendix.

2nd. The Court erred in finding the true and actual value of the properties of your petitioners, that of the Charleston Federal Savings & Loan Association at the sum of $921,-180.00, the First Federal Savings & Loan Association at the sum of $249,080.00, the West Virginia Building & Loan Association at the sum of $69,490.00, and the Empire Federal Savings & Loan Association at the sum of $273,880.00, in accordance with the method prescribed by the State Tax Commissioner of West Virginia, to be the assessed valuations for taxation purposes, and thereby denying to your petitioners the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, by not assessing said properties at 70% of the true and actual value fixed and determined by the Court and the State Tax Commissioner as aforesaid for purposes of taxation in accordance with the admitted, intentional, customary and systematic practice in said Kanawha County to assess property placed in Classification 1 at an average of only 70% of its true and actual value, and which system and practice of taking a percentage of the true and actual value for assessment and taxation purposes is also followed and used by the State Tax Commissioner in certain instances as shown by the unrefuted evidence in this case.

3rd. The Court erred in finding that, although personal property other than that of your petitioners placed in Classification I, as provided by Section 1, Article X of the Constitution of West Virginia, may be assessed at a lower valuation than the true and actual value, namely, upon a certain percentage of the true and actual value thereof, such assessed valuation of other property in Class I is not discriminatory against your petitioners, and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and of the provisions of Section 1, Article X of the Constitution of West Virginia; and by such finding of the said Circuit Court your petitioners are thereby denied the equal protection of the laws, are discriminated against in favor of other taxpayers owning property placed in said Class I, and are unequally burdened, and, therefore the properties of your petitioners are not uniformly and equally taxed along with other properties in Classification I, or with properties placed in the other classifications, namely, Classification II, Classification III, and Classification IV.

4th. The Court erred by denying to your petitioners the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States by assessing their properties for taxation purposes at what said Court found to be the true and actual value thereof instead of assessing the same for taxation purposes at the percentage shown by the uncontradicted evidence, namely, at 70% of the true and actual value, it being admitted on the record that all other property in the same classification with that of petitioners, to-wit, Classification I, in Kanawha County, is intentionally and systematically assessed for taxation purposes as an average of only 70% of its true and actual value.

5th. The Court erred in not finding that the true and actual, and market, and real, value of the properties of your petitioners, represented by investment shares and invest-

ment accounts, as provided by Section 14a, Article 3, Chapter 11, of the Code of West Virginia, as amended by Chapter 118 of the Acts of the Legislature of 1939, were as follows: Charleston Federal Savings & Loan Association at the sum of $878,148.67, First Federal Savings & Loan Association at the sum of $229,566.43, West Virginia Building & Loan Association at the sum of $64,641.17, and the Empire Federal Savings & Loan Association at the sum of $244,758.35, said sums, respectively, representing the par value of $100. per share of the investment shares and investment accounts, and that the valuation of the properties of your respective petitioners for assessment and taxation purposes was 70% of the true and actual, and market, and real, value of the properties of your petitioners represented by the aforesaid sums in accordance with other properties in Classification I as shown by the admitted and intentional practice and custom and system in Kanawha County to assess all properties in each of the four respective classifications by taking a percentage of what is found by the Assessor of Kanawha County to be the true and actual value of the properties, and which system of taking a percentage of the true and actual value for assessment and taxation purposes is also practiced and advocated by the State Tax Commissioner in certain instances of property placed in Classification I as well as with property in other classifications as shown by the uncontradicted and undisputed evidence in this case; and the Court erred in not finding as aforesaid thereby discriminated against your petitioners and in favor of the owners of other property, especially the owners of property in Classification I, and thereby denied to your petitioners the equal protection of the laws provided by the Fourteenth Amendment to the Constitution of the United States and the uniform and equal taxation provided by Section 1, Article X, of the Constitution of West Virginia.

6th. The Circuit Court erred in reversing the action and ruling of the County Court of Kanawha County, sitting, ex-officio, as the Board of Review and Equalization; the final

decree of the Circuit Court being contrary to the law and the evidence.

Wherefore, your petitioners, respectively and respectfully, pray in accordance with Chapter 11, Article 3, Section 25 of the Official Code of West Virginia, 1931, as amended by Chapter 41, Acts of the Legislature of West Virginia, at a session in 1933, that an appeal, or writ of error, may be granted from said final decree and order of the Circuit Court of Kanawha County, West Virginia, entered on December 23, 1941; that, upon a hearing of this cause, said decree and order may be reviewed and reversed; and that this Honorable Court enter such decree and order as the Circuit Court of Kanawha County should have entered in fixing the value of the respective properties of your petitioners for assessment and taxation purposes.

And your petitioners will ever pray, etc.

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION,

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION,

WEST VIRGINIA BUILDING & LOAN ASSOCIATION,

EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,

Petitioners,

By Counsel.

KOONTZ & KOONTZ,
W. ELLIOTT NEFFLEN,
Counsel for Petitioners.

APPENDIX TO PETITION FOR APPEAL

In the Circuit Court of Hancock County, West Virginia

In the Matter of Tax Assessments Against Hancock County Federal Savings and Loan Association.

MEMORANDUM OF OPINION
January 7, 1942

Hancock County Federal Savings and Loan Association, a building and loan association of Chester, complains of an assessment, purporting to be made under Code 11-3-14-a—a section enacted for the first time in chapter 118 of the Acts of 1939. The assessment is made on the following property basis:—

"Capital Stock or shares:

Optional Saving Shares	$1,887,689.96	
Free Shares	658,300.00	$2,545,989.96
Other Capital		
Surplus	360,540.33	
Undivided Profits	145,735.05	
Federal Insurance Reserve	140,000.00	
Uncollected Interest	4,627.97	650,903.35
	Total	$3,196,893.31
Deductions		
Assessed value of real estate	278,150.00	
Other deductions	30,000.00	
Borrowed money	50,000.00	358,150.00
		Total Deduc.
	Net Value	$2,838,743.31

While contending that par is a high assessment for the shares it is for all practical purposes agreed that no complaint is made about that part of the assessment. However, there is complaint about the addition of surplus, undivided profits, Federal Insurance Reserve and uncollected interest —a total of $650,903.35. It is further complained that the assessed value of real estate, instead of being $278,150.00, should be $417,524.17—this because the first figure represents the Hancock County assessment while the other figure represents the true and actual or market value. The matter of "other deductions" is not satisfactorily taken care of in the record, but it must be considered in connection with these other questions, and, while right will be given to counsel to challenge these statements, the narrative in the State's brief will be taken as correct for the purpose of this memorandum. The State likewise complains about the item of borrowed money. Last, petitioner complains that from this net result there should be a further credit of thirty-five per cent on account of the fact that property generally in Hancock County is assessed at sixty-five per cent of its real and actual value.

(In making this statement, the claim by Mr. Douglass that there should be a $29,000.00 deduction for stock in Federal Home Loan Bank of Pittsburgh and for HOLC bonds is not overlooked, any more than is the fact that this is only $1,000.00 short of the $30,000.00).

The first of these questions, that of the $650,903.35, has seemed so simple that a great deal of time has been spent in endeavoring to find some justification for this form of taxation by the State. None has been found. The statute does not provide it. Without going into the history of these several statutes or quoting them in full, it is very simple to glance back at section 14 of this chapter as it still stands and then follow that back to section 29 of chapter 29 of the Code of 1923. This may be carried back still further to 1896 when Judge Brannon delivered the opinion in Ohio

Valley Building and Loan Association v. County Court of Cabell County. That case very clearly laid down, at a time when this stock was taxed to the owners thereof, that the Association then had no capital to be taxed to it. The members gave in their stock as investments and deducted what they yet owed on their membership. See particularly the penultimate paragraph of this opinion.

Certainly section 14-a gives no justification for this taxation as such. Counsel for the State reply that these items, while entered as separate and individual items, in reality are only parts of an addition which, when totaled, shows the sum or actual value of the capital. There are two very simple answers to this contention. In the first place, it is not a mode of computation sanctioned by 14-a. That section, beyond equivocation, makes real and actual value synonymous with market value and directs how that information shall be obtained. It is true that the method of obtaining it is very broad; yet it allows the consideration of actual sales. The evidence as to actual sales is attacked as weak; petitioner's counsel reply that it is uncontradicted. No matter what weight we give to this part of the testimony, the testimony as a whole shows conclusively that this stock is, when at its very best, pegged so that it cannot go above par. To this contention, at the time of oral argument, State's counsel replied that this would leave a part of the assets of the Corporation untaxed; but, even assuming that this is true, the fault lies with the Legislature. We cannot assume that the Legislature, at the time this statute was enacted, was ignorant of the business of a building and loan association. We cannot assume that this effect, if such effect there is, was not plainly foreseeable. We say, "If such effect there is", because, whether such effect exists in this case or not, it is an effect which could very easily come about from the nature of this business.

The second answer to this contention lies in the fact that, were this form of assessment permitted, we should run in

every case a grave risk of an unjust assessment. The assets of those companies are not money—possibly a small part of the assets, but only a comparatively small part. They are investments—generally sound investments, but not investments of such nature as to justify one hundred per cent taxation clear down the line. In the present case, this court would hesitate long before saying that the assessment, as it stands, is even just, aside from the question of its legality. Counsel will understand that the court is not passing on this question. The evidence is not sufficient to justify such passing, even were it necessary. All that is sought here is to show how very easy it would be to overtax an association of this kind on this theory. That it may well be undertaxed by reason of the lack of this provision in the statute may just as truthfully be stated.

Before taking up the matter of the real estate, the other questions may be considered. As to the other deductions of $30,000.00 and the borrowed-money-item, $50,000.00, counsel for petitioner make the point that the court is not here faced with a cross appeal. The statute seems to the court sufficiently broad to enable it to revise an assessment upward even without any petition except one for *diminution*. Whether this conclusion is correct or not, it is believed that these deductions, *as such*, are improper. If they actually reduce the value of the stock below par, that is a matter which should be considered. It is not believed that they do. Accordingly, these deductions may go out.

The other two questions, while they have occasioned more difficulty than the others, may be briefly dealt with. It is not believed that this appraisement is discriminatory. It is uniform with all building and loan associations of the State and, even leaving out that feature, the evidence of Assessor Hill does not show that intangibles are uniformly listed at two-thirds of their value.

Accordingly, we reach the ridiculous situation where real estate which is appraised at two-thirds of its value is

credited at that rate against property appraised at its total value. From the equitable standpoint, this is not a perfect working out of law; but, in order to hold the statute void, we should have to find more than a mere equitable injustice —a moral injustice, if any. (As a factual matter, there may be no injustice at all in this case). Whatever the law ought to be, the law is that, "A proportionate share of such assessed value shall be deducted". The court cannot order the assessor to allow more than the statute permits. In this particular, the claim of petitioner is exactly like that of the State in regard to the first item. We are trying here to concern ourselves with what the law is and not with what the law would be if counsel and court were to unite in rewriting it.

Accordingly, the assessment may be modified by striking out the four items listed as, "Other Capital", and also by striking out, "Other deductions", and "Borrowed Money". This will leave the assessed value of the real estate to be deducted from the stock item. It may here be pointed out that that is the exact procedure provided by the statute.

State of West Virginia,
County of Kanawha, to-wit:

I, M. H. Hix, Clerk of the Circuit Court of Kanawha County, State aforesaid, hereby certify that deposit has been made to guarantee costs of preparation and indexing of the record, fees for filing petition, and making necessary copies of orders, costs of transmission and return of the record, and the making of a transcript of the record, in case a writ of error and supersedeas be allowed in the within action, lately pending in said Circuit Court.

I further certify that petition to the Supreme Court of Appeals in the within case has this day been filed in duplicate in my office, the duplicate remaining therein on file.

Given under my hand and the seal of said Court, this

12th day of March, 1942.

M. H. HIX, Clerk,
Circuit Court of Kanawha
County, West Virginia.

(Seal Circuit Court, Kanawha County, West Virginia.)

Filed
In Kanawha Circuit Court
Clerk's Office
Mar 11 1942
M. H. Hix
Clerk

Filed
Mar 17 1942
B. B. Jarvis
Clerk of the Supreme Court
of Appeals of West Virginia

Filed
Jun 2 1942
B. B. Jarvis
Clerk of the Supreme Court
of Appeals of West Virginia

Filed
Aug 21 1942
B. B. Jarvis
Clerk of the Supreme Court
of Appeals of West Virginia

State of West Virginia, to-wit:

The appeal prayed for in the foregoing petition was refused in Court at Charleston, on the 30th day of March, 1942.

Attest: B. B. JARVIS,
Clerk Supreme Court of Appeals.

State of West Virginia, to-wit:

The appeal prayed for in the foregoing petition was refused in Court at Charleston, on the 22nd day of June, 1942.

Attest: B. B. JARVIS,
Clerk Supreme Court of Appeals.

State of West Virginia, to-wit:

The appeal prayed for in the foregoing petition was allowed by a divided Court in Court at Charleston, on the 17th day of May, 1943. Bond is required in the penalty of $200.00, conditioned according to law. Judge Fox would refuse.

Attest: B. B. JARVIS,
Clerk Supreme Court of Appeals.

RECORD

(State of West Virginia,

At a Circuit Court for Kanawha County held at the Court House thereof on the 22nd day of August, 1941.)

George P. Alderson, State Tax Commissioner,

vs.) Appeal.

County Court of Kanawha County sitting as a Board of Review & Equalization.

In the matter of Tax Assessments against

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, Empire Savings & Loan Company, and Capitol Building & Loan Association.

This the 18th day of August, 1941, came George P. Alderson, State Tax Commissioner, by counsel, and within thirty days from July 18, 1941, the date of adjournment of the Board of Review and Equalization in and for Kanawha County, West Virginia, and filed his application and petition for relief, praying for an appeal from the order of the Board of Review and Equalization in and for Kanawha County, West Virginia, fixing the assessment of certain properties set out and described in the petition, and which petition is accompanied by the record of the proceedings before the said Board, including the evidence taken and exhibits filed therewith before the said Board, together with the order of the said Board entered thereon on the 18th day of July, 1941, whereby a valuation on the properties of protestants was fixed as described in the

page 2] petition filed herein, and the Board thereupon certified and identified the evidence and exhibits as aforesaid, and made the same a part of the record.

And thereupon, now acting upon said petition for appeal, and perceiving that the record is in due form and properly identified and certified, and that the statute in such case made and provided has been duly complied with; it is ordered that an appeal be, and the same is hereby awarded said appellant, as required by the statute in such case made and provided; and that the said application for relief and petition for appeal is ordered; and it is further ordered that this appeal be duly docketed among the civil cases to be heard on the first day of the next regular term of this Court, or as soon thereafter as may be convenient for this Court.

(Petition, Proceedings before the said Board and Exhibits, referred to in the foregoing order are in the words and figures following, to-wit:)

page 3] In the Circuit Court of Kanawha County, West Virginia

In the matter of Tax Assessments against Charleston Federal Savings and Loan Association, First Federal Savings and Loan Association, West Virginia Building and Loan Association, Empire Federal Savings and Loan Association, Empire Savings and Loan Company, and Capitol Building and Loan Association.

PETITION

To the Honorable J. F. Bouchelle, Judge of the Circuit Court of Kanawha County, West Virginia:

Your petitioner, George P. Alderson, Tax Commissioner of the State of West Virginia, humbly petitioning, would respectfully show unto your Honor:

First: That he is the duly qualified and acting tax commissioner of the State of West Virginia.

Second: That as Tax Commissioner of the State of West Virginia, he is, among other things required by law to cause the enforcement of the laws concerning the assessment and collection of taxes and is further charged with the duty of instructing County Assessors relative to the assessment of property to the end that all property in so far as possible may be assessed equally and uniformly and at its true and actual value, as provided by law.

Third: J. H. Abbot the Assessor of Kanawha County, West Virginia, assessed the properties of the above named Federal Savings and Loan Associations and Building and Loan Associations for the year 1941 for the purpose of taxation at their true and actual values in compliance with Section 14 A, article 3, chapter 11, of the West Virginia Code and also in compliance with other applicable provisions of chapter eleven of the West Virginia Code and further in compliance with a written instruction issued by the Tax Commissioner to all county assessors under date of June 24, 1941 relative to the assessment of the properties of all financial institutions operating in the State of West Virginia and that the assessor fixed the value of the properties of such associations in the following amounts: The property of the Charleston Federal Savings and Loan Association in the sum of $921,180.00, the property

page 4] of the First Federal Savings and Loan Association in the sum of $249,080.00, the property of the West Virginia Building and Loan Association in the sum of $69,490.00, the property of the Empire Federal Savings and Loan Association in the sum of $275,880.00, the property of the Empire Savings and Loan Company in the sum of $300,040.00, and the property of the Capitol Building and Loan Association in the sum of $429,020.00.

That the said Federal Savings and Loan Association and Building and Loan Associations filed their written petitions and protests with the County Court of Kanawha County,

West Virginia sitting as a Board of Equalization and Review and requested a hearing thereon and further requested that the assessments placed against their respective properties for the year 1941 by the Assessor of Kanawha County be reduced; that thereafter on the 17th and 18th day of July, 1941 evidence was adduced by protestants and your petitioner herein and together with exhibits filed on behalf of such associations and the tax commissioner; and the evidence was reduced to writing; and was considered by the County Court of Kanawha County sitting as a Board of Equalization and Review thereafter and by order entered of record July 18, 1941 the said court reduced the valuation or assessment of the properties of said associations thirty per cent from the amounts as fixed by the assessor resulting in an assessment of approximately seventy per cent of the true and actual value of the properties of the respective associations, i.e., by fixing the value of the properties of the Charleston Federal Savings and Loan Association in the sum of $639,030.00, whereas the assessor had valued such properties at $921,180.00, by fixing the value of the property of the First Federal Savings and Loan Association in the sum of $170,450.00, whereas the assessor had fixed the value of such property at $249,080.00, by fixing the value of the properties of the West Virginia Building and Loan Association at $48,230.00 whereas the assessor had fixed the value of such properties at $69,490.00, by fixing the value of the property of the Empire Federal Savings and Loan Association at $189,600.00, whereas the assessor had fixed the value of such property at $275,880.00, by fixing the value of the property of Empire Savings and Loan Company at $210,000.00, whereas the assessor had fixed the value of such property at $300,040.00, and by fixing the value of the property of the Capitol Building and Loan Association in the sum of $300,300.00, whereas the assessor had fixed the value of such property at $429,020.00.

Fourth: That thereupon and thereafter your petitioner duly objected and excepted to the action of the said County

Court of Kanawha County sitting as a Board of Equalization and Review as incorporated in its said order of July 18, 1941 and having indicated an intention to appeal from the said order prayed that said County Court of

page 5] Kanawha County sitting as a Board of Equalization and Review certify the complete record of the proceedings had and taken before it which was accordingly done as of the 18th day of August, 1941.

Fifth: That your petitioner is aggrieved by the assessment made by the County Court of Kanawha County sitting as a Board of Equalization and Review and here now files an application for relief and by it evidences his desire to appeal from a decision of the said County Court sitting as a Board of Equalization and Review fixing the assessment of the properties of the said associations hereinbefore mentioned, which decision is contained in said order heretofore entered on the 18th day of July, 1941, a copy of which order is attached hereto and asked to be read as a part hereof. That this application for relief is applied for in conformity with the statute in such cases made and provided within thirty days next after July 18, 1941, the adjournment day of the County Court of Kanawha County, West Virginia sitting as a Board of Equalization and Review.

Sixth: That such application for relief and appeal is taken from the said order entered July 18, 1941 pursuant to a hearing had before said County Court sitting as a Board of Equalization and Review on the 17th and 18th days of July, 1941, and your petitioner now makes a part of this petition for appeal and application for relief all of the proceedings had before the said County Court sitting as a Board of Equalization and Review which record and proceedings so certified and identified as aforesaid included and contained all the evidence taken and all exhibits properly identified offered as part of the evidence at such hearing before the said County Court sitting as a Board of Equalization and Review for the purpose of determining

the true and actual value of the properties of said associations as required by law and your petitioner asks that said record and proceedings so certified may be taken and read as a part hereof as if wholly incorporated herein.

Seventh: That your petitioner is entitled to an appeal from the said order of July 18, 1941 entered by the said County Court of Kanawha County sitting as a Board of Equalization and Review and is entitled to have the same reviewed and to have the true and actual value of the properties of the said associations determined and fixed by your honorable court for the year 1941.

Wherefore your petitioner and appellant prays that an appeal from the order and findings of the County Court of Kanawha County sitting as a Board of Equalization and Review, which said order was entered reducing the valuation of the properties of the said associations below true and actual value, may be granted by the Circuit

page 6] Court of Kanawha County, West Virginia in accordance with the statute in such case made and provided and that the said appeal may be determined and allowed from the record as certified by the County Court of Kanawha County, West Virginia sitting as a Board of Equalization and Review. That the Circuit Court of Kanawha County, West Virginia by a proper order made may ascertain the true and actual value of the properties of the said respective associations for the year 1941 and may enter its order accordingly so that the said property may be properly assessed in accordance with the statute in such case made and provided at its true and actual value. That the findings of the County Court of Kanawha County sitting as a Board of Equalization and Review may be corrected accordingly and the assessment of such properties fixed as made by the assessor of Kanawha County.

And your petitioner and appellant will ever pray, etc.

GEO. P. ALDERSON,
Tax Commissioner of the
State of West Virginia.

By Counsel:

CLARENCE W. MEADOWS,
Attorney General of the
State of West Virginia,
By W. HOLT WOODDELL,
Assistant Attorney General.
HOWARD J. GIBSON, ESQ.

page 7] CERTIFICATE OF RECORD OF THE BOARD OF REVIEW AND EQUALIZATION OF KANAWHA COUNTY, WEST VIRGINIA

Re: Matter of the Petitions and Protests of Charleston Federal Savings and Loan Association, First Federal Savings and Loan Association of Charleston, West Virginia, West Virginia Building and Loan Association, and Empire Federal Savings and Loan Association.

To Whom It May Concern:

We, the undersigned President and Commissioners of the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization in and for said Kanawha County, as and for the act of said Board of Review and Equalization, do hereby certify that at the instance and request of the State of West Virginia and George P. Alderson, State Tax Commissioner of the State of West Virginia, we have assembled, and submit herewith, the complete record of proceedings taken and hearings had before the said Board upon the petitions and protests of the Charleston Federal Savings and Loan Association, First Federal Savings and Loan Association of Charleston, West Virginia, West Virginia Building and Loan Association, and Empire Federal Savings and Loan Association, petitioners and protestants, as of July 17-18, 1941, at which time their counsel, Koontz & Koontz and W. Elliott Nefflen, appeared on behalf of said petitioners and protestants, and Clarence W. Meadows, Attorney General of West Virginia, by W.

Holt Wooddell, Assistant Attorney General of West Virginia, and Howard J. Gibson of the office of the State Tax Commissioner of West Virginia, appeared in behalf of the State of West Virginia and George P. Alderson, State Tax Commissioner of the State of West Virginia.

The record of said proceedings consists of the following papers:

First: The written petitions and protests filed by the said petitioners and protestants.

Second: The testimony taken by Reuel E. Sherwood, a Shorthand Reporter, before the Board at the
page 8] hearing beginning on July 17, 1941, and ending on July 18, 1941, and certified by him, the same comprising, exclusive of all exhibits, two hundred and eight (208) typewritten pages, the cover thereof being marked and designated for the purpose of identification, "Before the County Court of Kanawha County, Ex-officio Board of Review and Equalization. In the Matter of the Petitions and Protests of Charleston Federal Savings and Loan Association, West Virginia Building and Loan Association, and First Federal Savings and Loan Association of Charleston, West Virginia. Transcript of hearings July 17-18, 1941."

Third: All exhibits offered and introduced in evidence in connection with the testimony of the various witnesses who appeared and testified before said Board, which said exhibits so offered and introduced in evidence have been marked and identified by the said Reuel E. Sherwood, Shorthand Reporter as aforesaid, and are referred to in the testimony of the various witnesses, as shown by the transcript of hearings mentioned in paragraph "Second" last above mentioned.

Fourth: A true and correct copy of the order entered by said Board in its books of records, as of July 18, 1941 reducing the assessed valuations of the said petitioners and protestants.

And the said State of West Virginia and said George P.

Alderson, State Tax Commissioner as aforesaid, by and through their counsel, Clarence W. Meadows, Attorney General of West Virginia, by W. Holt Woodell, Assistant Attorney General of West Virginia, and Howard J. Gibson, objecting to the reduction fixed and determined by the said Board by its order entered in these proceedings, referred to in paragraph "Fourth" last above mentioned, and desiring to make the proceedings taken and had herein a matter of record for the purpose of applying to the Circuit Court of Kanawha County, West Virginia, for an appeal to the decision of this Board, we have hereby certified
page 9] the aforesaid matters as of the 18th day of July, 1941.

In Witness Whereof, we have hereunto subscribed our names as the President and Commissioners of the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization in and for said Kanawha County, as the act of said Board of Review and Equalization, this 18th day of August, 1941.

W. T. BROTHERTON
President.
MONT CAVENDER

Commissioners,
County Court of Kanawha County,
West Virginia, ex-officio Board of
Review and Equalization in and for
said Kanawha County.

page 10] PETITION
Copy

The petition and protest of Charleston Federal Savings & Loan Association, filed with the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization, of said Kanawha County.

1. Your petitioner and protestant aforesaid complains of and protests against the assessment of its property by the Assessor of said Kanawha County, as shown by the property books prepared by said Assessor for the current calendar year commencing January 1, 1941, to said Board of Review and Equalization, wherein it is shown that the assessment and valuation of the property of your petitioner and protestant is as follows:

Personal Property, Charleston District, $921,190.00.

2. Your petitioner and protestant complains and says, in support of the protest aforesaid, that the above valuation is in excess of the true and actual value of said personal property, and furthermore is proportionately higher than the assessment valuation of other properties in the same county.

3. Your petitioner and protestant is aggrieved by the excessive assessment and valuation of its property as aforesaid by the Assessor of said Kanawha County; that the properties of other owners in said Kanawha County are not assessed and valued at their respective true and actual values; and that the assessment and valuation of the property of your petitioner and protestant at a proportionately higher assessment valuation than the properties of other owners is discriminatory, is not uniform and equal, and is in violation of the provisions of the Constitution and amendments thereto of the State of West Virginia and the United States of America, particularly Section 1, Article X of the Constitution of West Virginia, adopted at the General Election in November, 1932, and the Fourteenth Amendment to the Constitution of the United States of America.

page 11] Wherefore, your petitioner and protestant prays that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, will correct the error of the Assessor of said Kanawha County in the valuation of the property of your peti-

tioner, that the said property may be reduced in valuation so as to be uniform and equal with the assessment and valuation of the properties of other owners in said Kanawha Co., and that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, shall cause to be done any and all other things that may be deemed necessary and proper to cause the valuation of the property of your petitioner to be uniform and equal with the valuation of other properties in said county, as provided by Chapter 11 of the Code of West Virginia of 1931, and any and all amendments thereto, the Constitution, and its amendments, of the State of West Virginia, and the Constitution, and its amendments, of the United States of America, as your petitioner and protestant will ever pray, etc.

CHARLESTON FEDERAL SAVINGS
& LOAN ASSOCIATION,
By M. BOIARSKY,
Its Secy-Treas. & Mgr.
Petitioner and Protestant.

KOONTZ & KOONTZ,
W. ELLIOTT NEFFLEN,
Counsel for Petitioner and
Protestant.

page 12] PETITION
Copy

The petition and protest of First Federal Savings & Loan Association, filed with the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization, of said Kanawha County.

1. Your petitioner and protestant aforesaid complains of and protests against the assessment of its property by the Assessor of said Kanawha County, as shown by the property books prepared by said Assessor for the current calendar year commencing January 1, 1941, to said Board of

Review and Equalization, wherein it is shown that the assessment and valuation of the property of your petitioner and protestant is as follows:

Personal Property, Charleston District, $249,080.00.

2. Your petitioner and protestant complains and says, in support of the protest aforesaid, that the above valuation is in excess of the true and actual value of said personal property, and furthermore is proportionately higher than the assessment valuation of other properties in the same county.

3. Your petitioner and protestant is aggrieved by the excessive assessment and valuation of its property as aforesaid by the Assessor of said Kanawha County; that the properties of other owners in said Kanawha County are not assessed and valued at their respective true and actual values; and that the assessment and valuation of the property of your petitioner and protestant at a proportionately higher assessment valuation than the properties of other owners is discriminatory, is not uniform and equal, and is in violation of the provisions of the Constitution and amendments thereto of the State of West Virginia and the United States of America, particularly Section 1, Article X of the Constitution of West Virginia, adopted at the General Election in November, 1932, and the Fourteenth Amendment to the Constitution of the United States of America.

page 13] Wherefore, your petitioner and protestant prays that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, will correct the error of the Assessor of said Kanawha County in the valuation of the property of your petitioner, that the said property may be reduced in valuation so as to be uniform and equal with the assessment and valuation of the properties of other owners in said Kanawha Co., and that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, shall

cause to be done any and all other things that may be deemed necessary and proper to cause the valuation of the property of your petitioner to be uniform and equal with the valuation of other properties in said county, as provided by Chapter 11 of the Code of West Virginia of 1931, and any and all amendments thereto, the Constitution, and its amendments, of the State of West Virginia, and the Constitution, and its amendments, of the United States of America, as your petitioner and protestant will ever pray, etc.

FIRST FEDERAL SAVINGS &
LOAN ASSOCIATION,
By PAUL G. EDMUNDS,
Its Secy-Treas.
Petitioner and Protestant.

KOONTZ & KOONTZ,
W. ELLIOTT NEFFLEN,
Counsel for Petitioner and
Protestant.

page 14] PETITION
Copy

The petition and protest of West Virginia Building & Loan Association, filed with the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization, of said Kanawha County.

1. Your petitioner and protestant aforesaid complains of and protests against the assessment of its property by the Assessor of said Kanawha County, as shown by the property books prepared by said Assessor for the current calendar year commencing January 1, 1941, to said Board of Review and Equalization, wherein it is shown that the assessment and valuation of the property of your petitioner and protestant is as follows:

Personal Property Charleston District, $69,490.00.

2. Your petitioner and protestant complains and says, in support of the protest aforesaid, that the above valuation is in excess of the true and actual value of said personal property, and furthermore is proportionately higher than the assessment valuation of other properties in the same county.

3. Your petitioner and protestant is aggrieved by the excessive assessment and valuation of its property as aforesaid by the Assessor of said Kanawha County; that the properties of other owners in said Kanawha County are not assessed and valued at their respective true and actual values; and that the assessment and valuation of the property of your petitioner and protestant at a proportionately higher assessment valuation than the properties of other owners is discriminatory, is not uniform *and equal, and is* in violation of the provisions of the Constitution and amendments thereto of the State of West Virginia and the United States of America, particularly Section 1, Article X of the Constitution of West Virginia, adopted at the General Election in November, 1932, and the Fourteenth Amendment to the Constitution of the United States of America.

page 15] Wherefore, your petitioner and protestant prays that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, will correct the error of the Assessor of said Kanawha County in the valuation of the property of your petitioner, that the said property may be reduced in valuation so as to be uniform and equal with the assessment and valuation of the properties of other owners in said Kanawha Co., and that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, shall cause to be done any and all other things that may be deemed necessary and proper to cause the valuation of the property of your petitioner to be uniform and equal with the valuation of other properties in said county, as provided by Chapter 11 of the Code of West Virginia of 1931,

and any and all amendments thereto, the Constitution, and its amendments, of the State of West Virginia, and the Constitution, and its amendments, of the United States of America, as your petitioner and protestant will ever pray, etc.

WEST VIRGINIA BUILDING & LOAN ASSOCIATION,
By ROBERT WATT,
Its Secy-Treas.
Petitioner and Protestant.

KOONTZ & KOONTZ,
W. ELLIOTT NEFFLEN,
Counsel for Petitioner and Protestant.

page 16] PETITION

The petition and protest of Empire Federal Savings & Loan Association, filed with the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization, of said Kanawha County.

1. Your petitioner and protestant aforesaid complains of and protests against the assessment of its property by the Assessor of said Kanawha County, as shown by the property books prepared by said Assessor for the current calendar year commencing January 1, 1941, to said Board of Review and Equalization, wherein it is shown that the assessment and valuation of the property of your petitioner and protestant is as follows:

Personal Property, Charleston District, $273,880.00.

2. Your petitioner and protestant complains and says, in support of the protest aforesaid, that the above valuation is in excess of the true and actual value of said personal property, and furthermore is proportionately higher than the assessment valuation of other properties in the same

county.

3. Your petitioner and protestant is aggrieved by the excessive assessment and valuation of its property as aforesaid by the Assessor of said Kanawha County; that the properties of other owners in said Kanawha County are not assessed and valued at their respective true and actual values; and that the assessment and valuation of the property of your petitioner and protestant at a proportionately higher assessment valuation than the properties of other owners is discriminatory, is not uniform and equal, and is in violation of the provisions of the Constitution and amendments thereto of the State of West Virginia and the United States of America, particularly Section 1, Article X of the Constitution of West Virginia, adopted at the General Election in November, 1932, and the Fourteenth Amendment to the Constitution of the United States of America;

page 17] Wherefore, your petitioner and protestant prays that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, will correct the error of the Assessor of said Kanawha County in the valuation of the property of your petitioner, that the said property may be reduced in valuation so as to be uniform and equal with the assessment and valuation of the properties of other owners in said Kanawha Co., and that this Honorable County Court, ex-officio Board of Review and Equalization, of said Kanawha County, shall cause to be done any and all other things that may be deemed necessary and proper to cause the valuation of the property of your petitioner to be uniform and equal with the valuation of other properties in said county, as provided by Chapter 11 of the Code of West Virginia of 1931, and any and all amendments thereto, the Constitution, and its amendments, of the State of West Virginia, and the Constitution, and its amendments, of the United States of America, as your petitioner and protestant will ever pray, etc.

EMPIRE FEDERAL SAVINGS &
LOAN ASSOCIATION,
By DELBERT T. ROBINSON,
Its Secy-Treas.
Petitioner and Protestant.

KOONTZ & KOONTZ,
W. ELLIOTT NEFFLEN,
Counsel for Petitioner and
Protestant.

page 18] Before the County Court of Kanawha
County, West Virginia,
Ex-officio Board of Review and Equalization.

In the Matters of

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association,
Petitioners and Protestants;

And, also,

Empire Savings and Loan Company and Capitol Building and Loan Association,
Petitioners and Protestants.

Assessments for the purposes of taxation as of January 1, 1941.

On the 17th day of July, 1941, came Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, and West Virginia Building & Loan Association, petitioners and protestants, by their counsel, Koontz & Koontz and W. Elliott Nefflen, and also came the State of West Virginia and George P. Alderson, State Tax Commissioner of West Virginia, by their counsel, Clarence W. Meadows, Attorney General of West Virginia, by W. Holt Wooddell, Assistant Attorney General of West Virginia,

and Howard J. Gibson, and thereupon the three protestants respectively tendered their separate written petitions and protests, and upon motion the same, and each of them, were thereupon filed, the said protestants each claiming that the respective assessed valuations of their properties, as of January 1, 1941, as shown by the property books of Kanawha County, West Virginia, are in excess of their true and actual values, and furthermore proportionately higher than

page 19] the assessment valuation of other properties of other owners and taxpayers in Kanawha County, and therefore not uniform and equal, all of which is more fully and at large set up in each of said petitions and protests, and thereupon evidence, consisting of the testimony of witnesses and the filing of exhibits, was adduced on behalf of said protestants and the State of West Virginia before Reuel E. Sherwood, a shorthand reporter, and completed on July 18, 1941. On July 18, 1941, the Empire Federal Savings & Loan Association, by its counsel, Koontz & Koontz and W. Elliott Nefflen, tendered its written petition and protest, and upon motion said written petition and protest was ordered filed, the said Empire Federal Savings & Loan Association adopting in its behalf the evidence adduced on behalf of the other three petitioners and protestants aforesaid; and after all of the evidence had been adduced on behalf of the said petitioners and protestants and the State of West Virginia, which said evidence, consisting of the testimony of witnesses and exhibits, taken and certified by Reuel E. Sherwood, shorthand reporter, is hereby made a part of the record herein, and upon consideration of all of which, the County Court of Kanawha County, West Virginia, sitting as the Board of Review and Equalization for said Kanawha County, is of the opinion, and doth hereby find, that the assessed valuations, as of January 1, 1941, made by the Assessor of Kanawha County, West Virginia, as shown on the property books of Kanawha County, West Virginia, which said property books for the current year, commencing January 1, 1941, have been submitted by the said Assessor of Kanawha County to, and are

now before, this County Court, sitting as the Board of Review and Equalization, of the property of the Charleston Federal Savings & Loan Association, in the sum of $921,180.00, of the property of the First Federal Savings & Loan Association, in the sum of $249,080.00, of the property of the West Virginia Building & Loan Association, in the sum of $69,490.00, and of the property of the Empire Federal Savings & Loan Association, in the sum of $273,880.00, are in excess of the true and actual values of the respective properties of the said four protestants, respectively, and that the assessed valuations aforesaid of the

page 20] said properties of the said petitioners and protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are discriminatory and not uniform and equal, and thereupon the said County Court of Kanawha County, sitting as the Board of Review and Equalization, is of the opinion to, and doth hereby, order that the assessed valuations, respectively, as of January 1, 1941, of the said four petitioners and protestants be, and the same are hereby reduced and fixed, as follows: the Charleston Federal Savings & Loan Association at the sum of $639,030.00, the First Federal Savings & Loan Association at the sum of $170,450.00, the West Virginia Building & Loan Association at the sum of $48,230.00, and the Empire Federal Savings & Loan Association at the sum of $189,600.00; and it is hereby further ordered and directed that the assessed valuation of the properties of each of said four protestants as fixed by this County Court, sitting as the Board of Review and Equalization of Kanawha County, be placed on the property books of Kanawha County, West Virginia, for taxation purposes as of January 1, 1941.

And also on the 18th day of July, 1941, the Empire Savings & Loan Company, by James Kay Thomas, its attorney, filed its written petition and protest, and also the Capitol Building & Loan Association, by Robert Watt, its Secretary-Treasurer, filed its written petition and protest, claiming

that the assessed valuations of their respective properties, as of January 1, 1941, as shown by the property books of Kanawha County, West Virginia, are in excess of their true and actual values and proportionately higher than the assessed valuations of properties of other owners and taxpayers in Kanawha County, and therefore discriminatory and not uniform and equal, and asked that upon the evidence adduced in the matters of Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, be considered in connection with their two separate

page 21] petitions and protests; and the County Court of Kanawha County, West Virginia, sitting as the Board of Review and Equalization for said Kanawha County, is of the opinion, and doth hereby find, that the assessed valuations as of January 1, 1941, made by the Assessor of Kanawha County, West Virginia, as shown on the property books of Kanawha County, West Virginia, which said property books for the current year, commencing January 1, 1941, have been submitted by the said Assessor of Kanawha County to, and are now before this County Court, sitting as the Board of Review and Equalization, of the property of Empire Savings & Loan Company in the sum of $300,040.00, and of the property of Capitol Building & Loan Association in the sum of $429,020.00, are in excess of the true and actual values of the respective properties of said last named two protestants, respectively, and that the assessed valuations aforesaid of the said properties of the said two protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are therefore discriminatory and not uniform and equal, and thereupon the said County Court of Kanawha County, sitting as the Board of Review and Equalization for said county, is of the opinion to, and doth hereby order that the assessed valuation as of January 1, 1941, of Empire Savings & Loan Company be, and the same is hereby, reduced and fixed at the sum of $210,000.00, and

the assessed valuation as of January 1, 1941, of Capitol Building & Loan Association be, and the same is hereby, reduced and fixed at the sum of $300,300.00; and it is hereby further ordered and directed that the assessed valuations of the properties of each of said two protestants as fixed by this County Court, sitting as the Board of Review and Equalization of Kanawha County, be placed on the property books of Kanawha County, West Virginia, for taxation purposes as of January 1, 1941.

page 22] Enter this 18th day of July, 1941.

COUNTY COURT OF KANAWHA COUNTY, WEST VIRGINIA, EX-OFFICIO BOARD OF REVIEW AND EQUALIZATION,

President.

Commissioner.

Commissioner.

page 23] Before the County Court of Kanawha County, West Virginia,
Ex-Officio Board of Review and Equalization

In the Matter of the Petitions and Protests of Charleston Federal Savings and Loan Association, West Virginia Building and Loan Association, and First Federal Savings and Loan Association of Charleston, West Virginia.

Before: W. T. Brotherton, President, Carl C. Calvert and Mont Cavender, Commissioners.

Appearances:

Koontz & Koontz, (W. Elliott Nefflen, Esq.,) and
A. G. Thompson, Esq.,
Counsel for the Petitioners.

W. Holt Wooddell, Esq., Assistant Attorney General,
State of West Virginia, and
Howard J. Gibson, Esq.,
Counsel for the State Tax Commissioner,
State of West Virginia.

Dale G. Casto, Esq.,
Counsel for the Kanawha County Court.

Be It Remembered that on July 17, 1941, on a hearing in the above-entitled matter, the protestants introduced and offered the following evidence, to-wit:

Mr. Nefflen: I represent the Charleston Federal Savings & Loan Association, the West Virginia Building & Loan Association and the First Federal Savings and Loan Association of Charleston, West Virginia, and I am filing the written protests as part of this record for each of the three corporations, setting up that each of them feel they are aggrieved by the assessment of their per-
page 24] sonal property in Charleston District for the calendar year 1941, for the following reasons. First, that the assessment is in excess of the true and actual value of the personal property of each of the companies and that the assessment is proportionately higher than the assessment of other personal property and real estate in Kanawha County. I mean that it is proportionately higher, not only on personal property in Class I, but is proportionately higher than the personal property in the other classifications provided by the Constitution and laws of West Virginia; and in addition, that the assessment of the personal property of these companies is proportionately higher than the assessed valuation of real estate in Classes 2, 3, and 4, as provided by the Constitution and laws of West Virginia, and the resulting effect is that the revenue derived from the personal property of these three companies by the levy proposed by the various levying bodies as provided for by law is excessive and higher than the revenue that would be derived from the properties, both

personal and real, regardless of what classification they may be in; and by reason of such revenue being higher these three companies feel they are being discriminated against in so far as the taxation is not uniform and equal, as provided by the Constitution of West Virginia, particularly section 1, article 10 thereof. Furthermore that such discrimination is in violation of the Constitu-
[page 25] tional amendment of the United States of America.

I would like to call Mr. Wilkinson first in order to show the assessed valuation and how it was arrived at for this year.

GARLAND F. WILKINSON, having been first duly sworn as a witness by the President of the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Neffler:

Q. State your name, residence and occupation.

A. Garland F. Wilkinson, Charleston, W. Va.; Chief Deputy Assessor of Kanawha County.

Q. How long have you been connected with the Assessor's office of Kanawha County?

A. Approximately eight and a half years.

Q. What was your occupation prior to that time?

A. I was a bookkeeper in the sheriff's office.

Q. For what period of time were you a bookkeeper in the sheriff's office?

A. Approximately a year and a half.

Q. Prior to that time what was your occupation?

A. I was connected with the Carbon and Carbide Chemical Corporation.

Q. In what capacity?

A. Well, I had charge of the costs depart-
[page 26] ment at one time and I was with their Ethynoline department.

Q. Will you state what schooling and education you have had?

A. I have had a high school education and about three correspondence courses.

Q. In bookkeeping?

A. In Bookkeeping and accounting.

Q. I will ask you, Mr. Wilkinson, to state the assessed valuation of the Charleston Federal Savings & Loan Association and in what district of Kanawha County that assessment was made for the year 1941?

A. You mean the assessed valuation as made up by the Tax Commissioner's office?

Q. As made up by the State Tax Commissioner's office and is now on the personal property books of this county.

A. I have the revised computation as made January 24, 1941, by J. L. Van Verth of the Tax Commissioner's office, which is the valuation I was directed to use by the Tax Commissioner's office, and the assessed value is $921,180.

Q. Do you have that return as prepared by Mr. Van Verth?

A. I have.

Q. Will you file that as part of your testimony?

A. I will.

page 27] The paper referred to was then received in evidence and marked "Wilkinson Exhibit No. 1".

WILKINSON EXHIBIT No. 1, FILED

STIPULATION

It is stipulated by and between counsel for the State Tax Commissioner and the protestants that all original papers being filed may be withdrawn upon substituting and filing a true copy thereof.

Q. That shows thereon the assessed valuation of the real estate as fixed by the Assessor on line 26, does it not?

A. It does.

Q. And the amount?

A. $17,600.

Q. And that is the assessed valuation of the real estate of the Charleston Federal Savings & Loan Association for the year 1941 in Charlestor District?

A. I presume so; I have not checked it.

Q. Will you do so, and if there is any different figure, will you supply this record with it?

A. Yes, sir.

Q. Did the Charleston Federal Savings & Loan Association file any return with your office for the year 1941, both with respect to its real property and its personal property?

page 28] A. Yes, sir.

Q. Upon what form as that filed?

A. On Form S.T.C.O. 4-A.

Q. And what does that return as prepared and filed with you by the Charleston Federal Savings & Loan Association show with respect to the assessed valuation of the personal property?

A. $602,384.

Q. Does that return also show the method which was used in arriving at that figure?

A. Yes, sir.

Q. That is on page 3 of that return?

A. It is.

Q. Will you file that return as part of your testimony?

A. Yes, sir.

The return was then received in evidence and marked "Wilkinson Exhibit No. 2".

WILKINSON EXHIBIT No. 2, FILED

Q. Mr. Wilkinson, with respect to your Exhibit No. 2, on page 3, designated Schedule D, I wish you would state whether the method there used by the officers of the Char-

leston Federal Savings & Loan Association is the method that has been heretofore used in Kanawha County in arriving at the valuation of the personal property of this Building & Loan Association?

page 29] A. Not altogether.

Q. In what respect is it different?

A. The Reserves are left out, and Undivided Profits, which I have been accustomed to adding.

Q. I believe on page 2 is a typewritten sheet showing the assets and liabilities of this company. With respect to those reserves, where Reserves and Undivided Profits are shown, will you designate particularly those items to which you have just referred?

A. Undivided Profits in the amount of $27,011.69.

Q. That is designated "Undivided Profits"?

A. That is right. Preferred Income $32,268.09 and Contingent Fund in the amount of $12,500.

Q. Now, with the addition of the three items concerning which you just testified in Schedule D, and assuming that they were added, would that follow the same method that has been used by the Building & Loan Association in years previous to 1941?

A. That is right.

Q. I notice appearing in Schedule D on line 30 under the heading of "Net Value Per Dollar of Invested Capital" the notation "less 30%". Was that the amount of deduction from the net value of invested capital in

page 30] accordance with the method used in 1940 in assessing the valuation of personal property of this character?

A. It was, yes, sir.

Q. Now, Mr. Wilkinson, in your opinion as the chief deputy assessor, which do you believe to be the proper method to be used in assessing the valuation of this Building & Loan Association, whether the return as prepared by the State Tax Commissioner's office as shown by your Exhibit No. 1, or the return as prepared by this Association and represented by your Exhibit No. 2 with the three addi-

tional items to which you have referred in your testimony being added?

A. I believe the return with the addition of the reserves less the 30% discount would be the more equitable assessment.

Q. Would that be in line with the assessments of other personal property in Kanawha County by allowing the 30% discount?

A. It would be, yes, sir.

Q. Will you state the assessed valuation as shown by the records of your office of the personal property in Charleston District, Kanawha County, of the First Federal Savings & Loan Association for the year 1941?

A. The valuation as fixed by the Tax Commissioner was $249,080.

Q. Do you know who prepared that return

page 31] of the State Tax Commissioner's office?

A. Mr. J. L. Van Verth.

Q. Will you file that return as part of your testimony, to be marked "Wilkinson Exhibit No. 3"?

A. I will.

The return was then received in evidence and marked "Wilkinson Exhibit No. 3."

WILKINSON EXHIBIT No. 3, FILED

Q. Is that figure $249,080 the figure which appears upon the assessment records of Kanawha County in Charleston District for 1941?

A. Yes, sir.

Q. Who provided you with that information to arrive at this assessed value?

A. Mr. J. L. Van Verth of the State Tax Commissioner's office?

Q. Will you state the assessed valuation of the real estate of the First Federal Savings & Loan Association for 1941, Mr. Wilkinson?

A. The value as fixed by the Tax Commissioner's office was $16,150.

Q. And that is shown on the records for 1941?

A. Yes, sir.

page 32] Counsel for the State Tax Commissioner moved to strike out the answer because it is not responsive to the question. The question is "What was the assessed value?" Mr. Wilkinson's answer is that the assessed value was fixed by the Tax Commissioner, and he does not fix the assessed value.

A. I do not know the assessed value for I have not checked it, but, however, as shown by the Tax Commissioner's agent it is $16,150.

Q. If that figure is not correct will you place the correct figures in the record?

A. Yes, sir.

Q. I take it the actual assessment of the real estate was made by your office?

A. The assessment of the real estate was, yes, sir.

Q. Do you have a return for the year 1941 as prepared and made by the First Federal Savings & Loan Association?

A. Yes, sir.

Q. Will you file that return as part of your testimony, to be marked "Wilkinson Exhibit No. 4"?

A. I will.

The return was then received in evidence and marked accordingly.

WILKINSON'S EXHIBIT No. 4, FILED

page 33] Q. Will you examine the return as prepared by the First Federal Savings & Loan Association, marked "Wilkinson No. 4", and state of the method used in Schedule D with respect to its personal property is the method that has heretofore been used for the year 1940

in arriving at the valuation of its personal property?

A. I am not prepared to answer that question; I cannot say as to that.

Q. Can you tell why you cannot advise us at this time?

A. I have not checked the percentages used.

Q. Will you do so and later on return to the witness stand and advise whether that return as made by this company, your Exhibit No. 4, is in accordance with the method heretofore used?

A. Yes, sir.

Q. I will also ask you, when you return to the stand after examining this return further, if you will supply the figure which would be the assessed valuation of this company computed upon the same method which has heretofore been used in assessing the valuation of personal property of this particular association?

A. Yes.

Q. Do you have the return of the valuation
page 34] of the property of the West Virginia Building & Loan Association?

A. Yes, sir.

Q. What is the valuation as shown by that return?

A. $69,490.

Q. Is that the figure that has been placed upon your assessment records?

A. Yes, sir.

Q. Who supplied you with that return?

A. The West Virginia Building & Loan Association.

Q. Do you know who prepared that return?

A. Mr. Robert Watt, Secretary of the West Virginia Building & Loan Association.

Q. Were there any other papers attached to the return of the West Virginia Building & Loan Association?

A. Yes, sir, the assessment made by Mr. J. L. Van Verth dated May 19, 1941.

Q. Is the return to which you have just referred as being made by J. L. Van Verth the same as Schedule D of the return filed by the West Virginia Building & Loan Asso-

ciation?

A. Yes, sir, it is.

Q. Does the West Virginia Building & Loan Association have any assessment for real estate for 1941?

A. There is none shown on the return.

page 35] Q. Is Schedule D of the return made by the West Virginia Building & Loan Association the same as Schedule D as prepared by Mr. Van Vert?

A. Yes, sir, it is.

Q. Will you file the schedule D as prepared by Mr. Van Vert as part of your testimony?

A. Yes, sir.

The return was then received in evidence and marked "Wilkinson Exhibit No. 5."

WILKINSON EXHIBIT No. 5, FILED

Q. Will you state the assessed valuation of the First Federal Savings & Loan Association as shown by Exhibit No. 4 as disclosed on line 31 of Schedule D?

A. $216,710.

Q. And that is the amount as claimed by the First Federal Savings & Loan Association as shown by its return?

A. Yes, sir.

Q. Now, I wish you would look at your Exhibit No. 1, Exhibit No. 3 and Exhibit No. 5. I believe you state that each of these three exhibits showed that they were prepared by Mr. Van Vert of the State Tax Commissioner's office?

A. That is correct, yes, sir.

page 36] Q. Why were the figures setting forth the assessed value of these three corporations as shown on line 31 of Schedule D of each of those returns used by you in fixing the valuation of these three companies?

A. Because we received instructions from the Tax Commissioner's office to use these sheets and to make no

changes in them whatsoever.

Q. Did you at first agree to accept those valuations as fixed by the State Tax Commissioners' office?

A. I did not agree at first, no, sir.

Q. Why did you later?

Mr. Wooddell: Objected to because it is immaterial.

A. Because of the order by the Tax Commissioner's office, and I thought we had better probably do as he instructed.

Q. Will you state what the valuation of each share of stock of the Charleston Federal Savings & Loan Association represented by Exhibit No. 1 will be, using the return prepared by the State Tax Commissioner's office?

A. The net value per dollar of invested capital, which does not include the amount represented by real estate, which has been taken off, would be $1.049.

Q. Assuming the par value of the capital stock of this association is $100, would that make the value of each share of stock $104.90?

page 37] A. Yes.

Q. Will you look at your Exhibit No. 3, which is the return as prepared by the State Tax Commissioner's office. I believe line 30 in Schedule D shows the net value per dollar as $1.085, is that correct?

A. Again, after eliminating the amount paid by the company on real estate, it is.

Q. That is shown on the return?

A. Yes, that is the assessed value. I mean you would pay that much taxes, which is not included in this particular amount.

Q. Assuming that the par value of each share of stock of the First Federal Savings & Loan Association is $100 as shown on the return, and using the method directed by the State Tax Commissioner's office what would be the value of each share of stock of the First Federal Savings & Loan?

A. I would have to compute that. However, I can use the value shown here as the net value of invested capital,

which is $108.50.

Q. $108.50 per share?

A. That is right.

Q. Will you look at your Exhibit No. 5, which is the West Virginia Building & Loan Association re-

page 38] turn, and I believe line 30 of Schedule D shows the net value per dollar of invested capital is $1.075, is that correct?

A. That is correct.

Q. Again assuming that the par value of each share of stock of the West Virginia Building & Loan Association is $100, and using the figure as determined by the State Tax Commissioner's office shown by line 30, what would be the value of each share of stock of that company?

A. $107.50.

Q. A short time in testifying with respect to the Charleston Federal Savings & Loan Association and its return marked Exhibit No. 2, you stated that the deduction of 30% was in accordance with the method used in Kanawha County in assessing personal property, is that correct?

A. Not all classes of personal property, but intangibles, yes.

Q. In connection with your duties as chief deputy assessor will you state the nature of such duties; what are your particular duties?

A. To supervise the field deputies and make assessments generally for corporations and businesses.

Q. Do you issue instructions to them as to the way, means and methods of determining the valua-

page 39] tion of property for assessment purposes?

A. Yes, sir.

Q. Regarding livestock, what classification is that put in?

A. Class 1.

Q. What classification is the personal property of the three building and loan associations concerning whose returns you just testified placed?

A. Classification No. 1.

Q. The same as livestock?

A. Yes, sir.

Q. What other property is placed in Class 1?

A. Money, notes, accounts receivable, bonds other than government, state or municipal.

Q. And stocks?

A. No stocks other than building and loan association stocks or shares.

Q. Is personal property employed in agriculture in Class 1?

A. Yes, sir.

Q. How about products of agriculture?

A. In Class 1.

Q. In issuing your instructions to your field
page 40] deputies will you state how you instruct them to value the various types of property which you state are in Class 1? What method or plan is used?

A. Money is valued, of course, at 100% ; accounts receivable are valued at about 70% unless they are installment accounts, and they are valued at approximately 65%.

Q. You mean installment accounts are valued at 65%?

A. Yes.

Q. You mean 65% of their book value or the value shown on the face?

A. Yes, the book values shown on the face of them.

Q. How about other personal property such as livestock and agricultural products?

A. Livestock is valued as approximately 50% of the purchase value.

Q. How do you ascertain that purchase value in your instructions to your field deputies?

A. By asking the farmer what he paid for a plow or cattle *of* livestock, and also using their own judgment.

Q. How about notes?

A. Notes are assessed at approximately 70%.

Q. How about bonds?

A. Bonds are assessed at approximately 70%
page 41] unless their market value is less. Then, of

course, if the market value of bonds is less than 70% we generally factor them slightly under their market value.

Q. But generally you take 70% of the face value?

A. That is the usual general procedure, yes, sir.

Q. Is that same system used throughout Kanawha County in all its magisterial districts by all of your field deputies?

A. Yes, sir.

Q. Is that done under your supervision?

A. Yes, sir.

Q. From whom do you receive your instructions?

A. From Mr. Abbot, the Assessor of Kanawha County.

Q. With respect to other personal property used and occupied by an owner exclusively for residential purposes and upon farms occupied by either the owner or bona fide tenants, which under the Constitution are in Class 2,—is that correct?

A. That is correct, yes, sir.

Q. Are both real and personal property in Class 2?

A. No, sir, just real estate.

Q. Will you state how property placed in Class 2 is valued for assessment purposes in Kanawha County?

A. In regard to new buildings we get the
page 42] building permits from the municipalities and use those as a guide in determining the acutal cost. We also ascertain from the owner the total amount paid for the construction cost of the building and place it on our books at exactly 50% or between 50 and 60%, you see.

Q. With respect to property that is not in municipalities how would you ascertain the value of it?

A. We ascertain the complete cost of the building and place it on our books at between 50 and 60%.

Q. With respect to both buildings in municipalities and outside of municipalities how do you arrive at the value of real estate upon which improvements are made? The

building becomes part of the real estate, does it not?

A. That is right.

Q. Will you state, in order to make it clear as to arriving at the assessment valuation after the improvement is figured, how you do that?

A. The real estate is included with the building after it is placed on the books.

Q. That is an added element you consider to the cost of the building?

A. That is assessed separately from the building. The buildings are separate from the land. In placing buildings on the books we use the percentage of 50 or 60 and the land is placed in a separate column. The land values are determined by localities and in some districts the percentage is very low and in others it is fairly high.

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Q. Going back to the improvements to which you just referred, in Class 2, both inside and outside of municipalities, when you spoke of the amount placed upon the assessment records, that the percentage is about 50 or 60%, of what did you speak, the true and actual value or the market value?

A. When you speak of those percentages it is cost value or replacement value.

Q. Do you determine that figure to be its true and actual value if it were offered for sale by the owner thereof and not the price which might be realized if that property was sold at a forced sale?

Mr. Gibson: Objected to as leading.

A. According to our methods of arriving at the true and actual value it is what I stated, by using about 50 to 60%.

Q. When you refer to the cost price, which you determine either by interviewing the owner or from building permits, is that the price which the owner would expect to realize if he sold it voluntarily and not upon a forced sale?

A. Probably in the case of brand new construction, yes.

Q. In other words, that figure of the owner

page 44] is what would be his book value?

A. It would be his book value, yes, sir.

Q. When you refer to 50 or 60% you mean 50 or 60% of that book value as determined by the owner and by considering the various elements to which you referred awhile ago?

A. Yes, sir, that is correct.

Q. In considering the real estate itself, whether the improvements are upon that land or not, still considering property within Class 2,—I mean by that property that is used exclusively for residential purposes, how do you arrive at the value of the real estate itself in determining that assessed valuation?

A. It depends on the district in which it is located, largely. By that I mean we may have a particular district in Kanawha County, for instance, East Charleston, in which the land values are probably assessed in some instances as high as 80%.

Q. 80% of what?

A. 80% of the purchase price or the cost price.

Q. You mean by that the real and acutal value as the owner would apply the same if he sold it upon the market voluntarily without it being a forced sale?

page 45] A. Yes, sir. In other districts we have land values assessed as low as probably 25% of the owner's valuation.

Q. When you speak of the owner's valuation you mean if he had it on the market voluntarily, and not at a forced sale?

A. That is correct. We have another classification of property under the provision of section 1, article 10 of the Constitution, I believe it is, known as the tax limitation amendment.

Q. That is in Class 3. What type of property is placed in that class?

A. Real estate not used and occupied by the owner ex-

clusively for residential purposes, vacant land, wild land, coal lands, store goods, merchandise, inventory, automobiles, household furniture, and all other real estate and personal property not applicable to Class 1 or Class 2.

Q. And located where?

A. Located outside of a municipality.

Q. What is the difference between Class 3 property and Class 4, as determined by the tax limitation amendment?

A. The only difference is that Class 4 property takes the municipal rate.

Q. Class 4 is the same as Class 3 only it is inside of a municipality?

A. Yes.

page 46] Q. That includes both real estate and personal property?

A. That is correct.

Q. Do you instruct your field deputies under the direction of Mr. Abbot in fixing the assessed valuation of all property in Class 3 and 4?

A. Yes, sir.

Q. What is the method used with regard to these two classes? Cannot we use them somewhat together?

A. Yes, that is right. The real estate is valued in much the same way as Class 2. Automobiles are assessed at approximately 30% less than the Blue Book value as of the first of the year.

Q. What do you mean by "Blue Book value"?

A. We obtain a regulation blue book as used by all car dealers, which places a value on the various kinds and classes of automobiles, and use the valuation as shown in this blue book at approximately 30% discount. In valuing gas wells the method is described by the Tax Commissioner's office. In determining the value of gas wells the Tax Commissioner prescribes that we get the 100% value of a gas well and multiply the gross sales by three and on it we allow a 33-1 3% reduction. This 33-1 3% reduction was agreed by the State Tax Commissioner and the method of

arriving at this deduction was because we do
page 47] not have other properties in the county assessed at their 100% valuation. All merchandise, store goods and all equipment of business establishments is assessed at 60% of the book value or inventory.

Q. When you speak of percentages of value you mean the true and actual value as determined by the owner if he would sell it voluntarily and not at a forced sale?

A. No, I was referring to his book value.

Q. As fixed by the owner in valuing his own property at what it is worth?

A. Yes, or the cost price.

Thereupon at 12:00 o'clock, Noon, a recess was taken until 1:30 o'clock, P. M.

AFTERNOON SESSION

The hearing was resumed at 1:30 o'clock, P. M.
Present: As before noted.

GARLAND F. WILKINSON thereupon resumed the witness stand for further examination and testified as follows:

DIRECT EXAMINATION (Cont'd.)

By Mr. Nefflen:

Q. In what class is household property placed?

A. Household furniture?

page 48] Q. Household furniture.

A. In Classification 3 and 4.

Q. Will you advise how you arrive at the assessed value of household furniture?

A. We do not have any set procedure for valuing household furniture. It is more or less left up to the judgment of the individual assessors or the field deputies themselves.

Q. You have assessed household furniture yourself, have you?

A. Yes, I have.

Q. Will you state how you arrive at the assessed value of household furniture?

A. If household furniture is fairly old and is in what you might term a "standard house", a five-room house is assessed at $250. In other words, with the exemption of $200, the taxpayer would pay on a valuation of probably $50. If it is a six-room house the valuation is sometimes placed at $300.

Q. Would that valuation, not including the constitutional exemption, be the price for which such furniture woud sell if voluntarily offered for sale and upon such terms as such property is usually sold, and not sold at a forced sale? Would that assessed value represent the sale price, in your judgment?

page 49] A. It probably would. It would be probably lower to some extent.

Q. You do not give to it the same percentage of discount that you would to notes, accounts receivable, automobiles and other property about which you have heretofore testified?

A. Yes, I do. However, furniture sells at a much less price than other forms of property, particularly in this vicinity. The resale value of furniture is very low as compared to other forms of property.

Q. And for that reason would not be entitled to the same percentage as other property; is that what you mean?

A. It is entitled to the same percentage but it is difficult to get the value of household furniture, depending on its age, quality, etc.

Q. Then a somewhat different method is used than about other personal property about which you have heretofore testified?

A. That is correct.

Q. Do you have the return filed in your office by the Charleston Finance Company?

A. Yes, sir, I have.

Q. Can you state by whom that return was prepared?

A. It was prepared by Mr. J. L. Van Verth

page 50] Q. Can you identify the particular sheet as the one prepared by Mr. Van Verth?

A. Yes, sir.

Q. Will you file that sheet and have it marked as part of your testimony "Wilkinson Exhibit No. 6"?

A. I will.

The paper referred to was then offered in evidence and marked "Wilkinson Exhibit No. 6".

WILKINSON EXHIBIT No. 6. FILED

Q. Is that the original return or a computation sheet of the State Tax Commissioner's office?

A. It is a computation sheet of the Tax Commissioner's office.

Q. Were those same figures shown on the computation sheet used on the return of the Charleston Finance Company?

A. No, sir, they were not.

Q. In what respect are they different?

A. The Charleston Finance Company submitted a return of $297,833 for their intangibles and a valuation of $2,745 in Class No. 4, whereas the returns sheets submitted by the Tax Commissioner's office shows a valuation of $421,600 in Class 1 and $3,660 in Class 4.

page 51] Q. Will you state what the figure was that was placed upon the assessment record of Kanawha County for the assessed valuation of the Charleston Finance Company?

A. The figures that the State Tax Commissioner advised to be used, which is $421,620.

Q. I wish you would look at the bottom part of your Exhibit No. 6 of the Charleston Finance Company as prepared by the State Tax Commissioner's office under the heading of "Computation of Value" and state how the as-

sessed valuation of installment notes was reached.

A. Well, one item, "Cash", of which the book value is shown as $621.14, is assessed at $621.14. Another item, "Installment notes", the book value is shown as $495,352.85 less 15%, making the assessed value of $421,000.

Q. In regard to installment notes that valuation is computed by the State Tax Commissioner's office and shows a discount of 15% on installment notes, does it not?

A. It does, yes, sir.

Q. In what district of Kanawha County was the Charleston Finance Company property assessed?

A. In East Charleston District.

Q. Do you have the return of the Colonial Finance Company?

A. No, sir, I do not have that return.

Q. Do you have any paper filed in your of-
page 52] fice with respect to the assessed valuation of the Colonial Finance Company?

A. I have the computation by the Tax Commissioner.

Q. Will you tell by whom that computation was prepared?

A. Mr. J. L. Van Verth of the State Tax Commissioner's office.

Q. Will you state if you have assessed the property of the Colonial Finance Company for the year 1941?

A. We have.

Q. And what figure did you use in arriving at that valuation?

A. The value as found by the State Tax Commissioner's office, in amount $3,207, Class 1; and furniture and fixtures, Class 4, in the amount of $64,700.

Q. Will you file that return as part of your testimony and have it marked "Wilkinson Exhibit No. 7"?

A. I will.

The return was then offered in evidence, marked "Wilkinson Exhibit No. 7".

WILKINSON EXHIBIT No. 7, FILED

Q. Looking at your Exhibit No. 7, with respect to the computation of the value of personal property, which is Class 1, will you state the valuation fixed by the

page 53] office of the State Tax Commissioner on the particular items and how they were arrived at?

A. The first item, "Cash", is shown as a book value of $89.58, assessed value $89.58; Item No. 2, Loans and Discounts, book value $74,711.99, less 15%, assessment value, $63,505.19; Item No. 3, "Contracts in Process", book value $720, assessed value $612; making a total of $63,207, Class 1.

Q. Do you have the return of the Home Finance Company or any papers in relation to determining its assessed valuation?

A. Yes, sir, I have.

Q. What paper do you have?

A. The computation as made by the State Tax Commissioner's office.

Q. And prepared by whom?

A. I really do not know, I cannot tell if it is by Mr. Van Verth or not. He may identify it for me. It is by Mr. J. L. Van Verth of the State Tax Commissioner's office.

Q. You exhibited that paper to Mr. Van Verth in the court room and he identified it?

A. Yes, sir.

Q. Will you state what the valuation is of the Home Finance Company as reflected by the paper prepared by the Tax Commissioner's office?

page 54] A. The valuation of Class 1 is $91,740; Class 4, $1,397.44.

Q. The figures about which you just testified are shown upon the paper to which you referred of the Home Finance Company?

A. On the sheets referred to in the State Tax Commissioner's letter of instructions, yes, sir.

Q. Will you file that paper as part of your testimony,

marked "Wilkinson Exhibit No. 8"?

A. Yes, sir.

The paper was then offered in evidence and marked "Wilkinson Exhibit No. 8".

WILKINSON EXHIBIT No. 8, FILED

Q. Looking at the last exhibit, will you state the computation of value as determined by the State Tax Commissioner's office and the items thereunder dealing with Class 1 property?

A. Item 1, Cash, book value $3,777.68, assessed value $3,777.68; Item 2, Loans, $103,491.14 book value; assessed value $87,967.35; total $91,740.

Q. With respect to Class 1 property, will you state the assessed valuation of the Home Finance Company as placed upon the assessment records of Kanawha County for the year 1941?

A. $91,740.

page 55] Q. I notice with respect to "Loans" you state a figure of $103,491.14 representing the book value, and the assessed value of that particular item was $87,967.35. Will you state what percentage of the book value the assessed value represents?

A. 88½%.

Q. That would be about 11½% discount of the book value?

A. Yes, sir, it is about 11¾%.

Q. Where is the property of the Home Finance Company placed for valuation purposes, in what district?

A. East Charleston District.

Q. Do you have the return of the Household Finance Company or any paper representing the valuation upon which the assessment of the Household Finance Company was fixed?

A. Yes, I have the returns.

Q. Will you state from whom you received the paper to

which you just referred?

A. From Mr. J. L. Van Verth of the State Tax Commissioner's office.

Q. Will you file that paper as part of your testimony and have it marked "Wilkinson Exhibit No. 9"?

A. I will.

The return was then received in evidence and marked "Wilkinson Exhibit No. 9".

WILKINSON EXHIBIT No. 9, FILED

page 56] Q. Will you state the valuation of the property of the Household Finance Corporation as reflected by your Exhibit No. 9 prepared by the Tax Commissioner's office?

A. Yes, sir. Item No. 1, "Loans", book value $290,018.91, assessed value $246,515; Item No. 2, Cash, book value $8,554.99, assessed value $8,554.99; total of Class No. 1 $255,070. Class 4, Item 1, Leasehold, $1200; furniture and fixtures and office machines $2320.

Q. With respect to the item marked "Loans" the book value is higher than the assessed value, is that correct?

A. That is correct.

Q. Will you state what percentage of the book value the assessed valuation represents?

A. Approximately $11\frac{3}{4}\%$.

Q. By that you mean the discount?

A. The discount.

Q. I now hand you your Exhibits 6, 7, 8 and 9. With respect to Classification 4, property designated generally as "Furniture and Fixtures" state if the figure relating to Classification 4 is under the heading "Book Value".

A. Yes, sir.

Q. I will ask you if any extension of that paper has been placed there with respect to Class 4 property only?

A. No, sir.

page 57] Q. Do you have any correction to make as to the discount regarding the Household Finance

Corporation since you have made a further computation?

A. Yes, sir, the discount allowed was 15% rather than 11¾.

Q. That is with respect to Loans?

A. That is right.

Q. Where is the Household Finance Corporation's place of business and in what district were the assessments made?

A. In East Charleston district.

Q. Are all of the four finance companies concerning which you have last testified and the Charleston Federal Savings & Loan Association, the First Federal Savings & Loan Association and the West Virginia Building & Loan Association located within the same magisterial district?

A. Yes, sir.

Q. And within what city of municipality?

A. In the municipality of Charleston.

Q. And all of these companies, the three protestants and the four finance companies, are subject to the municipality tax?

A. That is correct.

page 58] Q. I believe you testified that you have been with the Assessor's office a little over eight years?

A Yes, sir.

Q. Do you, as an appointee of the Assessor of Kanawha County, have any meetings with the other assessors and the State Tax Commissioner's office?

A. Yes, sir, we have a State Assessors Association and meet once each year, generally at the State Capitol.

Q. Have you attended all of those meetings?

A. I have during the past eight years.

Q. Have you held any office in that Association to which you just referred?

A. Yes, sir, I am the Secretary and Treasurer of the Association.

Q. How long have you been Secretary and Treasurer?

A. I do not know exactly but during the past several

years.

Q. Have you been active in that Association and participated in its conferences?

A. Yes, sir, I have.

Q. And I believe at those conferences representatives of the State Tax Commissioner's office are present?

A. Yes.

page 59] Q. Does the Tax Commissioner himself attend those conferences?

A. Yes, sir.

Q. I believe, Mr. Wilkinson, as a matter of fact the Tax Commissioner is required by law to call the assessors in for meetings, is he not?

A. Yes, sir.

Q. During those conferences which you have attended for the last eight years do you have any discussions upon the methods for any scheme in the way of arriving at and determining the assessment of real and personal properties?

A. Yes, sir.

Q. Have you ever discussed the term "true and actual value" in arriving at what the assessed valuation might be?

A. Yes, sir.

Q. And have you discussed that in the terms of the statute as contained in chapter 11, article 3, Code of West Virginia, which says that "property shall be assessed at a true and actual value, that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such

page 60] property were sold at a forced sale."

A. Yes, sir.

Q. In those conferences have you discussed ways and means of arriving at the assessed valuation by fixing some percentage of the true and actual value of what the value might be if sold upon the market voluntarily?

A. Yes, sir.

Q. Will you state for the record the nature of these discussions as between the assessors upon that practice of using a percentage of market valuation upon a voluntary sale?

A. In assessing various classes of properties we have agreed several years ago to use certain percentages of the inventory values or cost values or the book values of certain properties. For instance, inventories, merchandise, stocks, fixtures, machinery and equipment, we agreed to assess at 60%, and various classes of notes from 65 to 80% of their value. In fact the instructions we had on the front of Form 3-C were used by the majority of the assessors until those instructions were taken off during the past year by the Tax Commissioner's office.

Q. I now hand you a form of the State of West Virginia marked "S.T.C.O. Form No. 3-C" and ask you if that is the sheet to which you have just now referred?

page 61] A. Yes, sir, it is.

Q. In that on the first sheet thereof, under the heading "Instructions", are those the instructions as you have just related and enumerated dealing with the percentage of valuation to determine the assessed value?

A. That is correct. The first line reads, "The Assessor will find true and actual values, but the following may be used as guides for ascertain value."

Q. Will you file that paper as part of your testimony and have it marked "Wilkinson Exhibit No. 10"?

A. I will.

The paper referred to was then offered in evidence, marked "Wilkinson's Exhibit No. 10".

WILKINSON'S EXHIBIT No. 10, FILED

Q. As a result of your conferences of the 55 assessors of West Virginia and the representatives of the State Tax Commissioner's office, what would you say as to the common practice in West Virignia in arriving at the assessed

valuation if the percentage of the market value is taken in arriving at that valuation?

Mr. Gibson: Objection because it is beyond his common knowledge. We do not have any objection if he knows.

(Overruled; exception)

page 62] A. From discussions with other assessors I am of the opinion that the majority of the assessments on all classes of property is less than the true and actual value.

Motion to strike out the answer as not being responsive.

Q. Do you make that statement as a result of your meeting with the various assessors in these annual conferences and the discussions that there took place?

A. Yes, sir.

Q. I might ask you if the form furnished by the State Tax Commissioner's office which you just filed as your Wilkinson Exhibit No. 10 does not follow that same practice?

A. That is correct. Those methods of determining valuations were decided upon by the State Assessors' Association several years ago.

Q. Have they been followed in this county during that period of time.

A. They have, yes, sir, and we are still trying to follow them.

Q. For the year 1941?

A. Yes, sir.

Q. You did not include in that the assessments which have just been placed for the year 1941 upon the three protestants here appearing, did you?

page 63] A. No, sir, I did not.

Q. I believe that was for the reason you earlier testified, that the assessed valuation for the three protestants was placed on the assessment records as a result of the specific instructions of the State Tax Commissioner, is that correct?

A. That is correct.

Q. If you had followed the method which you use in Kanawha County in arriving at the assessed valuation of the three protestants here, the Charleston Federal Savings & Loan Association, the First Federal Savings & Loan Association and the West Virginia Building & Loan Association, which you have related you used with respect to other personal property in Class 1, and also taking the percentage valuation of other classes, if you had not received specific instructions from the State Tax Commissioner's office, and thereby arrived at a different figure of valuation for these three companies?

A. I would have, yes, sir.

Q. Would that valuation have been less than the valuation as fixed by the office of the State Tax Commissioner?

A. It would have been, yes, sir.

Q. Will you state what the percentage of that valuation would have been?

A. It would have been approximately 30% less.

page 64] Mr. Gibson: We will defer cross examination of the witness until later in the hearing.

M. BOIARSKY, having been duly sworn as a witness by the President of the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. State your name, residence and occupation.

A. M. Boiarsky, Charleston, W. Va., Secretary, Treasurer and Manager of the Charleston Federal Savings & Loan Association.

Q. That is one of the protestants before the Board of Review and Equalization?

A. That is right.

Q. How long have you been an officer of the Charleston Federal Savings & Loan Association?

A. Since its organization, about six and a half years.

Q. Has it been under the same name during that time?

A. Yes, sir.

Q. What was your occupation prior to that time?

A. I was secretary, treasurer and manager of the Charleston Building & Loan Association and the Liberty Building Association prior to that time and still am.

Q. For what period?

page 65] A. A period of about 15 years.

Q. Then for at least 22 years you have been engaged in work of this nature,—building and loan association work?

A. That is right.

Q. Do you come in contact with the valuation of real and personal property in connection with your work?

A. I do with real property.

Q. And do you with respect to personal property represented by shares of stock of your association?

A. I do.

Q. Who has been preparing the tax return for the Charleston Federal Savings & Loan Association?

A. Our bookkeeper.

Q. Under whose supervision does he do that?

A. Under my supervision as manager.

Q. Did you prepare any return for your personal property for the year 1941?

A. I did.

Q. Were any other figures demanded of you by any representatives of the State Tax Commissioner or the Assessor's office in Kanawha County?

A. They came into my office and took my books and made up a return of their own.

page 66] Q. Who was the representative?

A. I think it was Mr. Van Verth there.

Q. Did you have prepared a separate return?

A. I did.

Q. In what respect was that return different from that prepared by the State Tax Commissioner's office?

A. In our return we took all our invested capital, that is what you call "Investment and Share Account". We took the total of that and deducted the money invested by the Government or Home Owners Loan Corporation, and totalled that and took 30% discount off of that.

Q. You referred to the HOLC; is that exempted under the statute?

A. That is right.

Q. Now, Mr. Boiarsky, you were here and heard the testimony of Mr. Wilkinson, the Chief Deputy Assessor of Kanawha County?

A. I did.

Q. You have seen the exhibit filed by him as Exhibit No. 1 for the Charleston Federal Savings & Loan Association?

A. I have.

Q. Mr. Wilkinson testified that under the assessed valuation as determined by the State Tax Commis-

page 67] sioner's office the value of each share of the Charleston Federal Savings & Loan Association is $104.90. What do you have to say as to that being the true and actual value if such stock were voluntarily offered on the market for sale upon the usual terms and not at a forced sale?

A. The true and actual value of that stock is $100 per share.

Q. Will you state how you arrive at the sum of $100?

A. Well, the investments in our institution would be withdrawn only at par value and everybody is entitled to 100 cents on the dollar and anybody can come in any time and put money in at 100 cents on the dollar.

Q. Do you mean by that you do not sell your stock or shares for a sum greater than $100?

A. No, sir, we do not.

Q. Why?

A. Because it is against our charter.

Q. Who issued the charter to this company?

A. The United States Government.

Q. Under an Act of Congress?

A. That is right.

Q. Does it provide in that charter you cannot sell that stock for more than $100 a share?

page 68] A. It does.

Q. How about repurchases of that stock from anyone that obtains it from your association?

A. It can be repurchased at 100 cents on the dollar.

Q. There is a reference made here in the return filed as shown by Wilkinson Exhibits 1 and 2 on line 9 of Schedule D of an HOLC investment in the amount of $375,000. Will you state under what circumstances the Home Owners Loan Corporation invested that money in your association?

A. They invested it the same as any other investor, under the condition that they cannot withdraw it for a period of five years, and after a period of five years they can call the money in at the rate of 10% per year.

Q. What do you pay the Home Owners Loan Corporation for the stock they call in at the end of five years and at the rate of 10% thereof?

A. We pay them $100 per share, par value.

Q. Is the Home Owners Loan Corporation an agency of the United States Government?

A. It is.

Q. Now, Mr. Boiarsky, do you or your wife own any real estate in Kanawha County?

A. My wife owns the home in the East End of the city.

Q. Who owns that?

page 69] A. My wife.

Q. It is in your wife's name?

A. Yes.

Q. What would you state would be the true and actual value of that property if it were sold voluntarily and upon such terms as such property is usually sold and not being at a forced sale?

A. I would say $10,000.

Q. Where is that property located?

A. 1712 McClung Street.

Q. In the City of Charleston?

A. In the City of Charleston.

Q. That is in Charleston District, Kanawha County, I believe?

A. Yes, sir.

Q. Will you state the assessed valuation of that property for the years 1940 and 1941, if you know?

A. I think it is assessed at $6,400 for the year 1940.

Q. Did you examine the records and see what the return is for 1941?

A. $6,000.

Q. You heard Mr. Wilkinson's testimony as to assessed valuation and as to the percentage of the true

page 70] and actual value which he said was the method used in Kanawha County?

A. Yes, sir.

Q. In connection with your work as Secretary-Treasurer of the Charleston Federal Savings & Loan Association are any loans upon real estate made by that association?

A. Yes, sir.

Q. What is the nature of those loans and what do you do in order to make such transactions?

A. We make loans on homes and apartments and some on business property.

Q. Where is that property located?

A. It is located in Kanawha County.

Q. How much of it is within the City of Charleston in Charleston District of this county?

A. I would say 50% of the loans are made in the City of Charleston.

Q. In making those loans what evidence of indebtedness do you take?

A. We take a note secured by a deed of trust on the property.

Q. Do you have any abstracts of property made?

A. Yes, sir.

Q. Do you have any appraisement of the val-

page 71] ulation of these properties made?

A. We do with all applications.

Q. In connection with the abstracting of the property is it shown what the assessed valuations of those properties are?

A. I could not tell you about the abstracts.

Q. Do you take occasion to look and see what the assessed value of any of those properties on which loans are made is?

A. When the application comes in the office one of the first things I do is to check the assessed value of the property.

Q. Do you do that yourself?

A. I do that right in the office.

Q. Who do you secure to make the appraisal of the valuation of property on which you propose to make a loan?

A. We have as appraisers one who is a director of our company and one who is an independent appraiser. Mr. A. G. Higginbotham is one of our directors and Mr. Arnold Barnes is the independent appraiser.

Q. Does the owner of the property have an appraiser that works with these two?

A. No, sir.

Q. I presume the appraisal is made to determine the amount of the loan you will make upon property?

A. That is right.

page 72] Q. After that appraisal is made what percentage of that appraised value do you loan as a maximum?

A. The maximum depends on the class of property and its location. Our maximum, I would say, is 65%.

Q. What is the average of the percentage of the appraised value of the loan which you make?

A. 60 and under; around 50%, I would say.

Q. Can you state within the last few years, the amount of the loans you have made and conducted under your supervision for the Charleston Federal Savings & Loan Association?

A. I could not say the exact amount but around $700,000 to $800,000.

Q. In the last two years?

A. Yes, sir.

Q. What would you say would be the amount of the loans of that organization which have been conducted under your supervision since the association was formed seven years ago?

A. We have probably closed $2,000,000 worth of loans and examined probably five or six millions worth.

Q. Can you tell approximately how many different properties would be included in that?

A. We have approximately 800 loans on our
page 73] books today, scattered in different districts throughout the city.

Q. With respect to the appraised value of these properties upon which you make loans and which appraised value is determined by the two appraisers you just mentioned, assuming that the loans would be around 50 to 55% of the appraised value, how would that amount of money so loaned compare with the assessed valuation?

A. I would say the loans were pretty close to the assessed value.

Q. Do you mean over or under?

A. I will say that the assessed value of the property would about represent 50% of the appraised value of the property.

Q. Would it not be true that in some instances the loans which you make would actually be more, even taking only 50, 55 or 60%, would be more than the assessed value?

A. That is true.

CROSS EXAMINATION

By Mr. Gibson:

Q. Mr. Boiarsky, are you familiar with the law under which building and loans and Federal savings and loans are assessed?

A. I leave that mostly to our legal staff. I
page 74] have read it but I am not familiar enough with it to discuss it.

Q. I believe you testified that in preparing your return for the year 1941 you took the investment shares and savings shares or savings accounts and totalled those and then deducted the HOLC investment, and from the result took 30% discount to get your assessed value, is that correct?

A. That is true, and we marked on our blank "To equalize other assessments in the county".

Q. Upon what theory or language of the statute did you take your 30% discount?

A. The practice that has been going on in this county, that everybody else has been getting 30%. We do not see any reason why we were not entitled to it.

Q. Do you know whether the statute under which your association is assessed allows such a discount to be taken in arriving at your assessed value?

Mr. Nefflen: Objection on the ground that the statute as to other properties does not make any such showing.

(Overruled; exception)

A. As I said before, I am not familiar with it.

Q. Did you in arriving at your assessment for 1941 take into consideration undivided profits and earned reserves?

A. I did not.

page 75] Q. Do you know whether or not the statute requires you to do that?

A. My understanding is that we took a fair market price as the value of our stock, and that is what I took, and it can be taken out and sold at that at anytime.

Q. Is it your opinion then that the capital of the Charleston Federal Savings & Loan Association as represented by the investment shares and investment accounts is worth only $602,384, the amount you returned for the year 1941?

Mr. Nefflen: Objection on the ground that the basis of

our protest is that this property should be assessed at the same percentage of valuation as other property in the county in Class 1.

(Overruled; exception)

A. I believe that the total amount that I returned is the actual value of the shares. I took the 30% off to equalize it with other taxes.

Q. Who deducted the 30%?

A. We did ourselves.

Q. Then you mean to say that the worth of your capital as represented by only your investment shares and savings share accounts is $860,548.67 for assessment purposes for the year 1941 instead of the $602,384 which you returned for assessments purposes, is that correct?

A. I answer that question the same way. I made the return of the full value of the investment stock and took 30% off to equalize it with the taxes that have been paid in this county and all over the state, so we would not be paying more than our proportion of the taxes.

[page 76]

Q. Did you make your return on the same basis last year?

A. We made the return on the same basis last year except that we have always contended that the market price of our stock was par. The assessor last year put in some reserves. We went along with him and took off the 30% and he added some reserves.

Q. Who deducted the 30% last year?

A. The assessor.

Q. From the amount you returned as the actual worth of your capital for assessment purposes?

A. Yes, sir.

Q. You did make a return last year, did you?

A. Yes, sir, and every year.

Q. Do you have your Statement of Condition as of 1940?

A. I have.

Q. Do you now have before you the balance sheet of the

Charleston Federal Savings & Loan Association for the year ending December 31, 1940?

page 77] A. Yes, sir.

Q. Will you please tell us what the worth of your shares is from that balance sheet?

A. The shares are worth $100 a share.

Q. Does that include any undivided profits or reserves?

A. It does not.

Q. I will ask you whether or not you know if the statute governing the assessments of building and loan properties requires those items to be included in making your return or in determining the assessments?

Mr. Nefflen: I object to the question upon the ground that the question uses the word "include", whereas the statute itself provides that the assessor shall taken into consideration all earned reserves and undivided profits of any such association in fixing the assessed valuation. It is the contention of the protestants here that once the true and actual value of the shares of stock has been determined, which we claim to be $100 a share, thereafter nothing may be taken into consideration to raise the value above its true and actual value as shown by the returns prepared by the State Tax Commissioner's office; and further, that the true and actual values of these shares being $100 per share, these protestants are entitled to the benefit of the reduction in percentage valuation which the assessor

page 78] of Kanawha County assessed or used in determining the valuation of other property within Class 1.

Mr. Gibson: In reply to that, I want to say that the assessments of all building and loan associations and Federal savings and loan associations is governed by section 14-A, article 3, chapter 11, of the West Virginia Code, which statute specifically provides the manner or method in which the capital or properties of all such associations is to be assessed. The purpose of my question is simply to find out whether or not the return as made by the Charleston Federal Savings & Loan Association has followed the statute.

This particular statute is different from the general statute providing that property shall be assessed at its true and actual value, in that the general statute simply provides that it shall be assessed at the true and actual value, without setting forth the method by which you will determine the value, whereas section 14-A, covering the assessment of building and loan and Federal savings and loan associations provides specifically the method by which such assessments shall be arrived at.

Mr. Nefflen: I want to take an exception to the remark of Mr. Gibson that building and loan associations and Federal savings and loan associations are not restricted to the provisions of section 14-A of article 3, chapter 11 of the Code as amended by the Acts of the Legislature,
page 79] 1939. That is stated clearly in section 14 (a). It provides that the capital of these associations is to be assessed at their true and actual value, not only in accordance with section 14(a) but "according to the rules prescribed by this chapter", which means chapter 11, dealing with the entire tax laws of the State of West Virginia.

A. I do not know.

Q. I will ask you, Mr. Boiarsky, to take Wilkinson Exhibit No. 2, which is your return for the year 1941 filed on S.T.C.O. Form No. 4-A, and look at the back of that return at the printed part under "Notice" and I will ask you whether or not you read the printed part of that form in preparing your return for 1941 or in supervising the preparation of same?

A. I do not believe I did.

Q. Then as a matter of fact, Mr. Boiarsky, if that contains the law under which you are required to make your return you are not in position to say whether your return for 1941 was filed in accordance with the law or not, is that correct?

A. I filed this with the advice of our attorney and take it for granted that he looked into the law.

Q. Of your own personal knowledge do you know

whether or not it was filed in accordance with the law?

A. No, I do not know enough about the law

page 80] to say. I think it was.

Q. You spoke awhile ago about your HOLC investment which you deducted in making your return. I will ask you whether or not that investment was not also deducted on the sheet prepared by Mr. Van Verth of the Tax Department suggesting the assessment for 1941, which is Wilkinson Exhibit No. 1?

A. It was deducted.

Q. What, if anything, does the assessed value of real estate upon which you make loans have to do with the amount which you determine you will loan on such real estate?

A. It has very little, except that we like to know about how much the property would be taxed, and we try to figure how much insurance a man has, and how much taxes he has, and the amount he has to pay on a loan, and see if he is able to make those payments. That is one of the important parts in looking up an assessment on a man's property.

Q. The assessed value enters into the consideration in respect to the value of the property and the amount of taxes the buyer may have to pay?

A. That is right, because the assessed value would not give us any true value of the property. We certainly could

not make loans on assessed value or we would

page 81] never be making anybody a loan.

Q. I believe you testified your loans are made on the appraised value as made by your appraisers on approximately 50 to 60% of the appraised value?

A. Yes. Of course we have a good many under that because they do not want that much money.

Q. You testified that the by-laws of your association prohibit you from either selling or repurchasing your shares at more than 100 cents on the dollar?

A. Correct.

Q. Is there anything in the by-laws which would prohibit the sale or purchase of one of your shares at more than $100 outside of your association?

A. Nobody could transfer any particular shares without our permission. They are all transferable on the books. I will say a man may have $100 of our stock and go out and sell it to somebody for $150, but he could walk right into our office and buy it anytime for $100. Anybody who wanted to buy it would not want to pay more than that when he could buy it at par.

Q. If they were sold for more than the face value when they were transferred on your books you would not be able to know the consideration that passed between

page 82] the purchaser and the buyer?

A. Of course we have not had any of that kind of transactions so we do not know about that. Usually a man comes in and pays in the money and when he wants the money he comes in and gets it. We have very few transfers. Uusually a man says he wants to invest so much in savings, say $500; and when he wants that money he walks in our office and says, "I want that money". Since we have been in business we pay that on demand and we give him a check for $500. We have had very little of transferred stock except where it is within a family where they are giving it to some of their children, or sometimes an estate. Outside of that we have had very little transfers of our investment.

Q. Then you do not know what the market value of shares was except that in your opinion it is not above par value?

A. I know it is not above par value. I know it is $100. There is no question in my mind as to what the market value is. Any bank in town will tell you what the market value is. There is no question as to the market value of our shares. You could not go out and sell $100 for $100 and one cent.

Q. In determining the market value what do you take

into consideration?

A. I take into consideration that our stock at
page 83] all times—a man can come in and purchase the stock for $100 or he can redeem it for $100. That is all I can take into consideration.

Q. Take your balance sheet as of December 31, 1940, and point out there the items you take into consideration in arriving at the market value of your shares.

A. I have only taken into consideration capital paid in. There is a fund set aside for contingencies or losses. For instance, we are a member of an insurance corporation and they make us set aside so much reserve. For instance, if there was a lot of building and loan associations would get in trouble over the country the insurance corporation could make us pay additional premiums. We have agreed that the additional premium could be paid, and they make us set that aside and we cannot touch it for anything. It cannot be paid out for any purpose. There is a sum set up for losses. You may run six or eight months that you would have a loss in your company and you still would want to pay dividends. If you quit paying dividends you break an association over night, so you have to set up in good times reserves to take care of bad business. There is no way we can use any of this money only in that way. For instance, you have a deferred income. The Federal Home Loan Bank, which is a part of the United States Government
page 84] and an agency of the United States Government, and it has ruled that we can only take out 10% of that every six months to be thrown into a contingent fund or into profits. It must stay in there to maintain a balance when you have bad times as well as good times.

Q. With respect to your item of undivided profits, there is nothing to prevent you from using that?

A. There is nothing to prevent it except we throw some of this into this reserve at different times.

Q. It is an added value to your capital?

A. Certainly it is added safety to the fellow that puts his money into our association. If an association had no

reserves at all and something should happen everybody would lose. The reserve is set up to take care of bad times.

Q. And *you* contingent fund is to take care of contingencies which have not yet come to pass?

A. That is true, but it may come to pass anytime.

Q. Speaking of losses, what loss did your association sustain during the year 1940?

A. There is no way for us to tell because we still have all the loans on our books. We have not foreclosed anybody since we have been in business. We have tried to be fair to the borrower as well as the investor. We
page 85] try to carry a man along if he has sickness or is out of a job. We don't go out and sell a fellow out. We try to give him a chance. There is no way to tell our losses until we foreclose and try to sell the property.

Q. As shown by your books for the year 1940, your association did not sustain any losses, is that correct?

A. That is correct, no actual losses that we know of.

Q. Mr. Boiarsky, I wish you would take your balance sheet as of December 31, 1940, and tell us what items on your balance sheet are capital or represent capital?

A. Which ones represent capital?

Q. Yes, sir.

A. Investments and savings shares, Federal. That is the HOLC $375,000. Total privately owned shares $878,148.67. That represents the capital in this association.

Q. How about undivided profits?

A. That is not part of the capital.

Q. Is it not earned capital?

A. No, sir. It is an earned reserve you are required to set up. It is not a part of the capital.

Q. What is it?

A. It is a reserve to stabilize the business,—I said that. It is reserve you have to set up to operate the
page 86] business. In the insurance corporation which insures the accounts, which is a part of the Government, or any agency of the Government set up by Con-

gress,—if they would come in tomorrow and take over my association books and check them over and see that we could not pay off, they have a method of paying it. No one in that association would get over $100 a share. It provides for that in the certificate issued to us. The reserves would be used in winding up the business. The Government has recognized that our shares are not worth over $100, otherwise they would ask us to pay back to them when we pay back this Home Owners stock a proportionate part of our reserves. The Government has recognized that these shares are just worth par and no more. We must pay them the same rate of dividend we pay anybodys else. They have no preference, they have the same kind of investment as anybody else that comes in on a private investment. When they ask for their money, and it might stay in for a period of 15 years, they do not ask for a bit of that reserve. They recognize that the capital is the only invested money and that the reserves are set up for the protection and safety of people who are borrowing and saving.

Q. Is it your opinion that your capital is worth just as much without your undivided profits and re-

page 87] serves as it is with them?

A. Yes, it is worth the same thing.

Q. Suppose you did liquidate and the amount of the assets you had left exceeded what you owed, who would get the balance or the excess?

A. Under the Insurance Corporation, if they had to take it over and pay everybody in full, it would go to them for the liquidating cost. If everybody would quit and we would quit voluntarily we would just divide up what we had and each one would get his proportion. If it was liquidated by the Insurance Corporation they would step in—there was one in Charleston which was liquidated and I paid them off in full in cash under the instructions of the Government.

Q. If you would volunatrily dissolve and you had an excess over the capital invested the shareholders would participate in that excess?

A. Of course, but under this other ruling the Insurance

Corporation would not take any chances of any losses. The Insurance Corporation pays them off in full immediately.

Q. For the purpose of the record, I am not sure if I asked you this question or not but, as I remember it, I asked you where you get your undivided profits and reserves, and I believe you said you earned those, is that correct?

page 88] A. You did not ask me that question but of course that is the way we get it. We have to earn it or we would not have it.

Q. Then is it not earned capital?

A. No, it is not earned capital, because it becomes a part of the undivided profits and reserves at the end of six months. The Federal Home Loan Bank makes you set up a certain amount of reserves before you set up your dividends. If you do not have that you have to take it out of your undivided profits and reserves. You may run a year and something would come up like it did in 1933-34-35 and you might be wiped out and the people not get anything out of it.

Q. Is that the capital out of which you pay your dividends?

A. No, sir, the dividends come out of the earnings each six months. Every six months they do that. We gave you this statement of December 31 and all the earnings have been entered on a man's book and it becomes his capital. For instance, if he had $100 and earned $3.00 he pays on $103 and it is returned that way for assessment. When we give you this nothing is earned because everything has been paid up. The shares are only worth $100 a share, par value, and never can be worth more.

Q. Plus the dividends?

page 89] A. *The* becomes part of his capital and it is entered on his books. You know how it works.

Q. No, I do not.

A. You had an account there and you ought to know.

Q. If it is a part of my capital why are not the undivided profits and reserves part of the capital?

A. Because that is set up for protection of the association. At no time do you get more than the value of your shares. You are trying to arrive at the fair market value of your shares and you know you can't go anywhere and get more than the $100 you have in it. Any man can walk into our office and get $100, no more. There is no other market for it. It is not like these small loan companies. You can't walk into their office and get it unless you sell it. There is no market for our stock except you walk into our office and get it. There is no question what the fair market price is. You can get 100 cents on the dollar anytime you bring it in.

Q. Take your balance sheet as of December 31, 1940. If I understand you correctly, your invested capital is the item of investment and saving shares, Federal, in the amount of $375,000.

A. Your investment in the Home Owners Loan Corporation.

Q. And the investment and saving shares ac-
page 90] count and others, in the amount of $878,148.67, making a total of $1,253,148.67, assuming that I correctly added those?

A. Yes.

Q. You show assets on your balance sheet of $1,363,738.82 and assets in excess of what you say is your invested capital, roughly, in the amount of $110,000?

A. That is not right.

Q. Is not that what your balance sheet shows?

A. No, sir.

Q. What does it show?

A. Which one did you take? Let us see which one you take.

Q. I am taking your total assets.

A. Are you taking "Loans in Process"?

Q. I am taking your total assets as shown on the asset side of the ledger on your balance sheet of December 31, 1940.

A. It is these items here.

Q. Which total how much?

A. $1,363,738.82.

Q. Yet you testify that your total investment capital was $1,253,148.67.

A. I did not say that. I say the total investment and saving shares account was that, plus the $148.-

page 91] 67, plus the $375,000. Then we have in here to make up the balance, "Loans in Process" $5,-199.60, appraisal and attorney's fees deposit $290,000, reserve for uncollected interest $1,280.29, deferred income $32,268.09, undivided profits $27,011.69, contingent fund $12,500, insurance reserves $7,000, reserve for interest on same $31.02. That makes up the other side of your ledger.

Q. I believe you testified that the valuation of your personal residence for the year 1940 was $6,400 and that the assessed value for 1941 is $6,000?

A. I think so; I am not sure about it.

Q. Do you know why the reduction was made?

A. Depreciation. The house is now over twenty years old and it is getting worth less all the time.

Q. Do you know how long it has been assessed at $6,-400?

A. I would say two or three years, I don't know; maybe four or five years.

RE-DIRECT EXAMINATION

By Mr. Nefflen:

Q. Would your testimony upon cross examination with respect to reserves, undivided profits and contingent fund be applicable to the First Federal Savings & Loan Association and the West Virginia Building & Loan

page 92] Association as to those same funds and also as to the value of the stock of the association?

Mr. Gibson: We object to that. The officials of the First Federal Savings & Loan and the West Virginia Building & Loan of course are competent to testify to that but not Mr.

Boiarsky, who is an official of another association.

Q. I will ask you, supplementing that same question, to include in it "the same method and scheme is followed by other building and loans and savings and loan associations with respect to those same funds"?

A. Yes.

Q. Is it not true that your reserves are set up to take care of losses?

A. Yes, sir.

Q. Is it not further true that undivided profits are set up to maintain an even dividend rate?

A. That is correct.

Q. Mr. Boiarsky, you were here when Mr. Wilkinson testified with respect to the Charleston Finance Company, the Colonial Finance Company, the Home Finance Company and the Household Finance Corporation. I will ask you if they are not companies that do what is commonly known as "a small loan" business, under $300 to a person?

page 93] A. That is right, up to $300.

Q. In other words, those finance companies do a loan business to individuals not exceeding $300 to each person?

A. I think that is their plan.

Q. Instead of taking security such as your company does on real estate, upon what class of property do they take securities?

A. Automobiles, household furniture, personal property and endorsements.

Q. It is a loan business to individuals to that extent?

A. Yes.

RE-CROSS EXAMINATION

By Mr. Gibson:

Q. I believe they also make what is called "signature loans" without any security whatsoever?

A. They may. I see some of them advertising it, but they do business under a high rate, 2½% a month or something like that. It is not our kind of business.

The witness was then excused.

PAUL G. EDMUNDS, having been duly sworn as a witness by the President of the Court, testified as follows:

page 94] DIRECT EXAMINATION

By Mr. Nefflen:

Q. State your name, residence and occupation.

A. Paul G. Edmunds, Charleston, W. Va., Secretary-Treasurer of First Federal Savings & Loan Association of Charleston.

Q. How long have you been an officer in that association?

A. In this particular association since 1934. Prior to that we were a state chartered organization, being chartered in 1928. We were converted to a Federal association in 1934.

Q. What was the name of the former organization?

A. Sun Building & Loan Association.

Q. What capacity did you fill in that?

A. The same capacity as I do now, Secretary and Treasurer.

Q. How long have you been connected with building & loan and Federal savings and loan associations?

A. Since January, 1928.

Q. You were here this morning when Mr. Wilkinson testified?

A. Yes, sir.

Q. You also heard him this afternoon when he testified?

A. I did.

page 95] Q. Mr. Wilkinson filed as part of his testimony Exhibits 3 and 4, No. 3 representing the valuation fixed by the office of the State Tax Commissioner, and No. 4 representing the return as pre-

pared by your company and filed with the Assessor for the valuation of that property for the year 1941. Will you look at this return and state if Exhibit No. 4 was the one prepared by you or under your supervision?

A. It is.

Q. Who signed that return for the First Federal Savings & Loan Association?

A. A. G. Thompson, Attorney.

Q. Was that return prepared under your supervision and also by Mr. Thompson, your attorney?

A. It was prepared by me and Mr. Thompson signed it in filing it with the Assessor.

Q. In making that return, with particular reference to Schedule D thereof, will you tate if in arriving at the assessed value of the privately owned shares as shown by line 31, schedule D, you followed the same practice, plan or method of valuation heretofore in effect in Kanawha County by taking a discount of 30% ?

A. I did with one exception. We have stock in the Federal Home Loan Bank, which has a requirement that we cannot get cash on it and the amount of the

page 96] stock is $6,000, and we valued that at 50% of its par.

Q. The other exception is any cash you might have?

A. Cash was put in at the exact figures, par.

Q. Then the 30% would apply to the other items except cash and the stock in the Federal Home Loan bank?

A. Yes, of Pittsburgh.

Q. Looking at Wilkinson Exhibit No. 3, which is the form prepared by the office of the State Tax Commissioner for the First Federal Savings & Loan Association, and testified to by Mr. Wilkinson, on line 30 of Schedule D it is shown that the net value per dollar of invested capital is $108.50 per share, and on line 2 it is shown that the par value of your shares is $100. I will ask you if the sum of $108.50 is the true and actual value of the stock of the First Federal Savings & Loan Association, the said true and actual value being determined at the price for which said

stock would sell if voluntarily offered for sale by the owner upon the usual terms of sale?

A. It is not the true and actual value.

Q. Will you state why it is not?

A. The reason it is not is because it never has a sale value of $108.50 or any other figure above or below $100 on the share.

page 97] Q. What would be its true and actual value if it were voluntarily offered for sale upon such terms as that property is usually sold and not at a forced sale?

A. $100.

Q. Can you further state how you arrive at that amount?

A. Our association is organized under the laws of Congress, and Congress also set up what is known as the Federal Savings & Loan Insurance Corporation to insure these shares to investors up to $5,000. If it is above $5,000 it is not insured. If our stock would go, in the opinion of some auditor, below $100 the Federal Insurance Corporation would come in and take us over. They guarantee to the investor $100, no more or no less, and they protect the investor up to $5,000.

Q. Is the stock of the First Federal Savings & Loan Association or that of any other association sold upon the market or outside of your association office?

A. I cannot speak for other associations. I do not know of any stock being sold on what is known as the open market.

Q. Has any been sold upon any stock exchange or local exchange?

A. Never to my knowledge.

page 98] Q. Mr. Edmunds, in your opinion and judgment what should be the correct assessed valuation of the personal property or the capital of the First Federal Savings & Loan Association by using the same method or plan that has been followed and is in effect in Kanawha County by taking a discount of approximately

40%?

A. I see no reason why, since our business is conducted on notes due us, we should not be entitled to 30% discount if other organizations are entitled to the same thing.

Q. In taking that discount, what would your valuation for assessment purposes be for 1941?

A. Taking that discount as we figure it out, our assessment should be at the rate of $94.40 per share.

Q. What would that amount to in the aggregate?

A. In dollars?

Q. In dollars.

A. For assessment purposes we should be taxed on that basis in the amount of $216,710.

Q. Is that shown in line 31 of Schedule D, Wilkinson Exhibit No. 4?

A. That is right.

Q. In conducting the business of the association do you make loans upon real property?

A. Yes, sir.

Q. How do you arrive at the amount of a
page 99] loan which you make upon that property, what method you pursue?

A. Mainly upon the appraisal. In dealing with an individual we rely somewhat upon his credit rating. We rely somewhat on his outside debts, but mainly on the value of the property. We take into consideration also his job or income before we make a loan.

Q. Do you have an appraisal made?

A. We do.

Q. In addition to the appraisal you take the other items into consideration?

A. We take them into consideration. The loans are considered by our Directors after appraisal and examination of the title. Each of the factors is considered.

Q. What do you mean by the appraised values? What do you take that to represent?

A. That is the fair market value of that property under the usual conditions and under the terms on which such

property might be sold.

Q. What is the maximum percentage of a loan which your association will make upon such property after you arrive at the appraised value?

A. 75% is the maximum, and we rarely do that.

Q. What is the average percentage that you make?

A. We have never made statistics but I would say, at a guess, possibly 60% of the appraised value.

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Q. Do you have an abstract of the property made upon which such loans are made?

A. Yes, sir.

Q. Where are these properties located upon which loans are made?

A. A large proportion is in Kanawha County. We have a few in outside counties. The law prohibits our lending beyond a 50 miles limit of our office.

Q. Restricting your answer to those properties within Kanawha County, what approximately is the percentage of those properties within the municipality of the City of Charleston?

A. I do not have those statistics but I would judge 40%.

Q. In having these abstracts made is the assessed valuation of these properties taken into consideration as reflected by the assesment records in the office of the County Court?

A. Our abstract does not report the assessed valuation as a part of the abstract.

Q. In making loans is the assessed valuation of such property taken into consideration?

A. Not very much. In our association we rely mainly on what we see on the ground and have acted on the assumption that assessments were normal. If that particular loan would go sour and we would have to take that property over, if we discovered it was an abnormal assessment we would try to get it reduced at that time.

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Q. Do you know in any particular instance what the appraised value of any such property may be as compared with the assessed valuation?

A. You mean with our loans?

Q. With respect to your loans.

A. I do not recall a single one.

Q. How long did you say you had been dealing with real estate in Kanawha County in connection with a loan association?

A. Since 1928. Prior to that time I was in the real estate business proper.

Q. Do you consider the assessed value in determining the appraised value or in arriving at the amount of a loan you will make after the property is appraised?

A. I do not recall ever taking that into consideration. The abstract does not indicate the assessed value.

Q. Mr. Edmunds, do you own any real property in Kanawha County?

A. I do.

Q. Where is it located?

page 102] A. It is located on Fairview Terrace in Edgewood.

Q. What do you consider the value of that property to be, that is, its true and actual value if it were sold voluntarily upon terms that such property is usually sold at and not at a forced sale?

A. I built that house upon those lots in 1923 at a total cost of approximately $11,000. The house is rented now and has depreciated somewhat and I recently asked somebody to buy it for $9,000; so I think the resale value of my house today is $9,000.

Q. What is the assessed value of that same property for the year 1940 and also for the year 1941 as reflected by the assessment books of Kanawha County?

A. I cannot answer as to 1941. I have my tickets where I paid my 1940 taxes and that property was assessed at $4,100.

Q. You heard the testimony of Mr. Wilkinson this morn-

ing regarding the method used in Kanawha County by allowing a discount and taking a percentage of the valuation, did you not?

A. I did.

Q. Is your property assessed within that percentage of valuation as testified to by Mr. Wilkinson?

A. I take it that it is.

Q. You also heard Mr. Boiarsky, the Secre-
page 103] tary-Treasurer of the Charleston Federal Savings & Loan Association, testify?

A. I did.

Q. Would you say that the testimony of Mr. Boiarsky, particularly upon his cross examination, with respect to the reserves for contingent fund and undivided profits and the value of stock, would apply to the First Federal Savings & Loan Association?

Objection; overruled; exception.

A. They certainly do.

CROSS EXAMINATION

By Mr. Gibson:

Q. Mr. Edmunds, are you familiar with the statute under which building and loan and Federal savings and loan associations are assessed?

A. Fairly familiar, yes, sir.

Q. Then you do know that the capital of every building and loan association and Federal savings and loan associations as represented or evidenced by the investment shares and investment accounts is to be assessed at its true and actual value?

A. That is my idea.

Q. I believe you testified that the true and actual value of the shares of the First Federal Savings &
page 104] Loan Association in your opinion was $100, no more and no less?

A. That is right.

Q. Did you return your shares for taxation and assessment at that amount?

A. I did not.

Q. Why?

A. For the reason given on direct examination, that we thought we were entitled to the usual discount given to other taxpayers of the same type. I might add to that that we did return for taxation purposes the form filled out by the State Tax Commissioner, whose agent obtained the figures in our office and who had access to all our books and papers. In addition to that we filed a return we thought was correct after having told the agent from the Tax Commissioner we thought he was in error.

Q. One further question along that line, Mr. Edmunds. As I understand you, although you consider the true and actual value of the shares of capital stock and investment shares in the First Federal Savings & Loan Association to be $100, you returned them for assessment and taxation at approximately $70 per share?

A. I did not; I returned them for $94.40 per share.

Q. Was that prior to your taking the 30% page 105] discount or afterwards?

A. Afterwards.

Q. You mean, after taking the 30% discount, you returned your shares at $94.40?

A. That is exactly what we did. We did not take 30% off of our capital stock, we took it off of our outstanding notes. Our property that we possess is notes. Our main property is notes, and we discounted those notes 30% and submitted it to the tax assessor to accept either form he chose. The reason we did that was because it was the custom in filing tax returns on that type of property in Kanawha County for a good many years.

Q. Then you did not take your 30% off your total assets but off your notes?

A. That is right. We did not take 30% off our cash. We took 50% off our stock in bank in Pittsburgh.

Q. I will ask you, Mr. Edmunds, whether or not you heard the testimony of Mr. Boiarsky?

A. I did.

Q. I will ask you whether or not it is your understanding that his association took the 30% discount off of the capital?

A. I do not remember his exact testimony. I am testifying as to what I took my 30% off from. I
page 106] submitted two forms for the deputy assessor to take his choice. One was a form made by your office and one by my office.

I would like to make one further explanation if it is permissible. We filed Wilkinson Exhibit No. 3 showing an assessed value of privately owned shares of $249,080. That is not a complete report of what we filed. We had a foot note showing that discount we figured. We discounted the state figures. If you have the footnote on the return you will see what I mean.

Q. Now, Mr. Edmunds, I will hand you Wilkinson Exhibit No. 2, which happens to be the original return of the Charleston Federal Savings & Loan Association, and call your attention to Schedule D, line 30, where it appears that a 30% discount was taken, and I will ask you whether or not that 30% discount was not taken from the total investment shares account and total saving shares account of that association?

A. I do not know that I can answer that question. Line 30 reads "Net value per dollar of invested capital (item 29 divided by item 11)." They have put in typing "Less 30%" and extended $256,164.80. There is an asterisk which refers to a footnote, "To equalize value with other properties". I do not know how I can answer it any clearer than what he has said there.

page 107] Q. I believe that return shows investment shares of $481,300.20?

A. It does.

Q. And savings shares of $396,848.67?

A. It does.

Q. Making a total of $878,148.67?

A. It does.

Q. There is also shown there a HOLC investment of $373,000, is that correct?

A. That is correct. I might add that the HOLC item of $375,000, is line 27 "other deductible liabilities (if properly deductible)".

Q. The total of those three items, if correctly added, amounts to what, according to that exhibit?

A. $1,253,148.67.

Q. I will call your attention to line 26, "Assessed value of real estate as fixed by the assessor"; what amount is there?

A. Line 26 shows $17,600.

Q. I will ask you if that item of $17,600, representing the assessed value of real estate, plus the HOLC investment of $375,000, making a total for those two items of $392,600, was not deducted from the total capital of $1,253,148.67?

page 108] A. It was deducted from the sums of Item 7 and Item 10.

Q. I believe, according to that return, Item 7 is "Totally privately owned shares" which amount is $878,148.67?

A. That is right.

Q. And Item 9 is HOLC investment of $375,000, according to that return?

A. That is right.

Q. The total of those two which appears on line 11 is $1,253,148.67?

A. Correct.

Q. The assessed value of real estate appears on line 26 in what amount?

A. $17,600.

Q. And the HOLC investment appears on line 27 in what amount?

A. That is typewritten and has the words "HOLC investment, total, $375,000."

Q. And the total of the amount of item 26 and item 27

is how much?

A. $392,600.

Q. Which amount was or was not deducted from $1,253,148.67?

A. It was deducted.

Q. Leaving a balance of what amount as

page 109] shown by line 29 on that return?

A. $860,548.67.

Q. State whether or not, as shown by line 30 on that return, any discount was taken from that amount.

A. I just quoted line 30 which reads as follows: "Net value per dollar of invested capital (item 29 divided by item 11)" and then the man who made this had inserted "less 30%" and it is extended at $256,164.80.

Q. I will ask you whether or not the discount of 30% taken on that return is taken from the same items as the discount taken on the return?

A. I rather doubt it but I have not made the actual comparison.

Q. Mr. Edmunds, do you happen to have a copy of your balance sheet or statement of condition as of December 31, 1940, with you?

A. Yes, sir, I gave you one just before this meeting.

Q. I wish you would take that statement and point out to us what items shown thereon you consider as capital?

A. On the liability side, "Amount due shareholders, $274,566.43".

Q. Is that the only item you consider as capital?

A. Yes, sir.

page 110] Q. In what category do you place the item under the liability side entitled "other required reserves and undivided profits" in the amount of $45,587.73?

A. That is the total of our reserves. This statement does not separate this amount into Federal reserves, contingencies, undivided profits and so on. Those reserves are to protect our association. We are worth 100 cents on the

dollar. The Government forced us to create a Federal insurance reserve and contingent reserves, and if there is anything left over we put it in the undivided profits. The undivided profits reserves is put there to carry us over hard times such as 1933, 1934 and 1935. So dividends will not be brought down approaching zero. If that would happen a large part of our people might withdraw and say they wanted their money back and it would tend to break us. Those reserves are there to protect your $100 if you have it with us, which you do not, but have it with the Charleston Federal Savings & Loan Association. Those reserves are for a specific reserve and not capital.

I might say further as to those reserves, if our company would dissolve today and if people would come in and pay us every cent and every note then we would have a little over $100 to pay to the stockholders on their venture.

There is no man in this room, including yourself, ever saw a company go out of existence and pay 100 cents on the dollar. If you have any experience as an attorney in liquidating companies you know they do not come out at 100 cents on the dollar. Those reserves are to protect us so the capital will not go below 100 cents on the dollar.

[page 111]

Q. Then the undivided profits, to that extent at least, are reflected in the value of the shares?

A. Not at all.

Q. Then if you had none do you think it would be worth as much?

A. No; the Insurance Corporation would come along and put us out of business the next morning but would pay you your 100 cents on the dollar.

Q. I understand that the Insurance Corporation if it insures the accounts and shares of your association requires certain reserves?

A. They do.

Q. They do not require you to maintain undivided profits, do they?

A. It is frequently recommended from the Federal Reserve Bank and the Federal Savings & Loan Insurance Corporation that we create additional reserves. In our annual conferences and our meetings with the

page 112] State and Government those are one of outstanding questions. We are to create reserves, not for the benefit of the $100 investor, because he will never get any more, but to protect the Insurance Corporation and to keep us on an even keel of paying normal dividends. We cannot touch the Federal savings and insurance reserves; the Government forces those.

Q. I will ask you whether or not your total reserves and undivided profits are in excess of the amount you are required to maintain by the Insurance Corporation of which you spoke?

A. No, sir, but the Insurance Corporation (taking it from memory) demands that we place in our reserve at the end of each six months' period 5% of our net earnings for that particular period. There is a specific amount we have to place in our reserves.

Q. They do not require you to maintain undivided profits, do they?

A. Undivided profits are a fluctuating figure. We have a right to use them for any purpose we see fit. We can increase our dividends at the end of the period out of undivided profits if the Directors think it is proper. It is to maintain an even flow of dividends, which is small enough, 3½—3%—for our company.

page 113] Q. Do you think that the shares of the First Federal Savings & Loan Association would be worth as much without any undivided profits as they would with the undivided profits in there?

A. Absolutely if it was insured. A brand new company with nothing but insurance is secured as to the amount the stockholders put in if they do not put in more than $5000 each. They are insured in the amount of 100 cents on the dollar without any reserves.

Q. Do your reserves and undivided profits come from

earnings?

A. They do; you cannot get them from anywhere else.

Thereupon at 5:00 o'clock, P. M. a recess was taken until 7:30 o'clock, P. M.

NIGHT SESSION

The hearing was resumed at 7:30 o'clock, P. M.

PRESENT: As before noted.

PAUL G. EDMUNDS thereupon resumed the witness stand for further cross-examination and testified as follows:

CROSS-EXAMINATION (Cont'd.)

By Mr. Gibson:

Q. Mr. Edmunds, on your December 31, 1940, balance sheet you show "Required reserves" and "Undivided profits" in the amount of $45,587.73. If you subtract from that your cash as contained on your *assest* side in the amount of $15,368.79 it leaves $30,218.94 of your required reserves, which I believed you testified were received from earnings. Is that not invested in assets now owned by your association?

page 114]

A. Part of it, yes, sir.

Q. What part of it?

A. Wait a minute,—all of it.

The witness was then excused.

ROBERT WATT, having been first duly sworn as a witness by the President of the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. State your name, residence and occupation.

A. Robert Watt, Charleston, Secretary and Treasurer of the West Virginia Building & Loan Association.

Q. Is the West Virginia Building & Loan Association a corporation authorized to do business under the laws of the State of West Virginia?

A. Yes, sir.

Q. How long have you been Secretary-
page 115] Treasurer of this association?

A. Since its organization on July 20, 1936.

Q. You have been its Secretary-Treasurer since that time?

A. Yes, sir.

Q. What was your business prior to that time?

A. Operating a building and loan Association.

Q. By what name and where?

A. The Capitol Building & Loan Association.

Q. Where?

A. In Charleston.

Q. How long?

A. Since 1921.

Q. Previous to that time did you have any connection with building and loan associations?

A. No, sir.

Q. You have been connected with these associations for a little over 20 years?

A. That is right.

Q. Were you here today when Mr. Garland Wilkinson, the Chief Deputy Assessor of Kanawha County, testified?

A. Yes, sir.

Q. Do you recall the exhibit filed by Mr. Wilkinson as his Exhibit No. 5, showing the assessed valua-
page 116] tion of the West Virginia Building & Loan Association as shown by the paper which you now have?

A. Yes, sir.

Q. Do you know who prepared that return, Exhibit No. 5?

A. It was prepared by Mr. Van Verth.

Q. Is he the gentleman that is connected with the State Tax Commissioner's office?

A. He so represented himself to me, yes, sir.

Q. Where was this return prepared, if you know?

A. In my office.

Q. Did he ask you for your records in order to prepare that return?

A. Yes, sir.

Q. And you showed him those records?

A. I produced all that he asked for.

Q. Is this valuation of the West Virginia Building & Loan Association capital stock and its personal property as represented by this Exhibit No. 5 and as testified to by Mr. Wilkinson as being the amount placed upon the assessment records of Kanawha County for the year 1941, as represented on line 31 of Exhibit No. 5 as being $69,490, the amount shown?

A. That is the amount shown on this exhibit here.

Q. Now, Mr. Watt, did you on behalf of your association, or any other person on behalf of the West Virginia Building & Loan Association, prepare and file with the assessor of Kanawha County a return for the purpose of having its property valuation assessed for the year 1941?

page 117]

A. I have not, no, sir.

Q. Have you in former years either yourself prepared or had prepared for the West Virginia Building & Loan Association a return for filing in the assessors' office?

A. Yes, sir.

Q. Why did not you prepare and file such a return for the year 1941?

A. I was informed by Mr. Van Verth that that was the one that he had filed,—the one he prepared.

Q. And you were accepting his advice?

A. Yes, sir.

Q. I believe on line 30 of Exhibit No. 5 it shows that the net value per dollar of invested capital is $1.075, which would make each share of stock of your association, the par

value of which is $100, worth $107.50 upon the method of valuation shown by Exhibit No. 5, is that correct?

A. That is what it shows here.

Q. And at that valuation the assessed valuation of the shares of stock of your association, using the

page 118] net value per dollar of invested stock, would make your privately owned shares worth $69,-490?

A. Yes, sir.

Q. Now, Mr. Watt, in view of your experience with building and loan associations and as Secretary-Treasurer of the West Virginia Building & Loan Association, is $107.-50 the true and actual value of each share of stock of your association?

A. No, sir.

Q. What is the true and actual value of the shares of stock of your association at a price for which such stock would be sold if voluntarily offered for sale under the same terms as such properties is usually sold at and not at a forced sale or involuntarily?

A. $100 a share.

Q. Why do you say $100, for what reason?

A. Because that is all we can sell it for, and we will redeem it at $100.

Q. You say that is all you can sell it for. What requirement is there that compels you to sell it or redeem it at $100 a share?

A. Because that is the value established under the charter, $100 a share.

Q. Under the charter?

page 119] A. Yes, $100.

Q. Which charter was issued under the laws of the State of West Virginia?

A. That is right.

Q. Is any of your stock sold upon the open market?

A. None that I know of.

Q. To your knowledge has any of the stock of your company sold at any place for more than $100 a share?

A. Not that I know of.

Q. Has any of that stock been sold upon any local brokerage market or other market where stocks and bonds are usually sold?

A. No, sir.

Q. In other words, could you pay for any stock which was presented to you for redemption or repurchase $107.-50?

A. We would not be allowed to.

Q. You mean under the same provisions of law or the charter provisions to which you just referred?

A. Yes, sir.

Q. Have you prepared any return which would show the true and actual value of the property of your association?

A. Yes, sir.

Q. Will you file such return as a part of your testimony marked "Watt Exhibit No. 1"?

page 120] A. Yes, sir.

The return referred to was then received in evidence and marked "Watt Exhibit No. 1."

WATT EXHIBIT NO. 1 FILED

Q. According to the return filed by you to show the proper value at which the property of the West Virginia Building & Loan Association should be assessed in Kanawha County, will you state the assessed value which you believe should be the amount placed upon the assessment records of Kanawha County?

A. I figure $45,248.82.

Q. Will you state how you arrive at that figure?

A. That is the total value of the installment stock, $9,-541.17 plus the fully paid stock $55,100, making a total of $64,641.17, plus the HOLC investment of $10,000. That is exempt from taxation and that $10,000 reduces that to $64,641.17. Then taking 30% of that valuation or $19,-392.35 off of that leaves a value of $45,248.82.

Q. Then the valuation of this stock, as you show by this return marked "Watt Exhibit No. 1," should be $45,248.82, is that correct?

A. Yes, sir.

Q. Why do you deduct 30%

page 121] A. That is in line, I understand, with other property values. I think it is in line with that 30% in former years.

Q. Did you hear the testimony of Mr. Wilkinson, the deputy assessor, today?

A. Yes, sir.

Q. Did you hear him state that personal property such as notes, bonds, and livestock which are in Class 1, which is in the same class with the personal property of your association, was given a reduction of 30%? Is that what you refer to when you say you are allowed to deduct 30%?

A. Yes.

Q. I will ask you if in making your return in previous years the same method or scheme was followed by you in making your returns to the assessor's office in valuing your property *than*?

A. I cannot recall just how it was. It was something on this order but I would not be certain just how they did. After it was all added up they took off 30%.

Q. You know they took off 30%?

A. Yes, sir.

Q. Who supervises the making of loans for your association?

A. I receive the applications and handle most of the business.

page 122] Q. How do you arrive at the amount of money which you will loan upon any application?

A. That is passed on by a Board of Directors. It is first appraised by two appraisers and then that appraisal is submitted to the Board of Directors.

Q. Who are your appraisers?

A. Mr. A. G. Higginbotham and myself do most of the

appraising.

Q. What factors do you take into consideration in appraising the value of property upon which your association makes loans?

A. The first thing is the location; then the construction of the building and the surrounding neighborhood. There are several factors that enter into the value of property, all of which are taken into consideration.

Q. Do you consider the assessed valuation of those properties?

A. Very seldom. I do not recall that we know the assessed value in very many cases.

Q. You do not know whether you know it or not?

A. I am not certain about that.

Q. Do you own any property yourself?

A. Yes, sir.

page 123] Q. Where is it located?

A. On the South Hills.

Q. Is that your residential property?

A. Yes, sir.

Q. Will you state the true and actual value of your residential property on South Hills at the price at which you would sell that property voluntarily and upon such terms as such property is usually sold at, and not a forced sale?

A. I would take $6,000 for it.

Q. Will you state what is the assessed value of that property for the calendar year 1940?

A. $2,400.

Q. That is the amount upon which you paid taxes for 1940?

A. That is right.

Q. Do you know what the assessed valuation of the property is for the calendar year 1941?

A. I am not certain but I hope it is not over $2,400.

Q. Did you make the return of your real property?

A. Not the real property, no, but it is on the land books

Q. You have not examined the assessor's records for 1941?

A. Not yet.

Q. With respect to your valuation of your property for the year 1940, would you say that the assessed

page 124] valuation of that property at $2,400 is within the percentage of valuation method used by the assessor of Kanawha County in assessing real property generally, as testified to by him today, at the rate of about 50 to 60% of its true and actual value or its market value?

A. $2,400, on the basis of $6,000, is less than 50%.

Q. Mr. Watt, I believe you heard the testimony of Mr. Boiarsky, the Secretary-Treasurer of the Charleston Federal Savings & Loan Association, to-day?

A. Yes, sir.

Q. I believe you heard his testimony, particularly on cross-examination, with respect to the reserves, undivided profits, income, contingent reserves and uncollected interest with regard to the value of the stocks of his association?

A Yes, sir.

Q. What would you say as to the applicability of his testimony with respect to these same reserves and undivided profits to the value of the stock of your company?

A. I am of the same opinion he is.

Q. You concur with his testimony?

A. Yes.

CROSS EXAMINATION

By Mr. Gibson:

page 125] Q. Mr. Watt, I believe your association is what is commonly known as "a state building and loan association" as distinguished from a Federal association, and it operates under a state charter and not under a Federal charter?

A. That is right.

Q. Do you know whether or not the law and the rules and regulations governing the operation of a building and loan association which is state-chartered are the same as those governing associations chartered by the Federal Gov-

ernment or one of its agencies?

A. I am not familiar with the Government requirements.

Q. Are you required by the law or by-laws to maintain any reserves?

A. Yes, sir. We are insured under the Federal Savings & Loan Insurance Corporation and we are required to set up the same reserves as to the Federal Association.

Q. What are those reserves?

A. There is a certain percent of your earnings that has to be set aside annually Federal Reserve account and, as I understand it, to be used in paying any losses that might be sustained through the Insurance Corporation.

Q. Are the books of your association examined by examiners of the State Banking Commissioner's

page 126] office?

A. Yes, sir.

Q. I will ask you whether or not, according to the examiner's reports of your association, undivided profits and reserves which you show are not carried as a part of capital and so listed?

A. No, sir, I do not think so.

Q. On the examiner's report where it says "Other Capital" I will ask you whether or not your reserves and undivided profits are not listed by the banking examiner under that particular item?

Mr. Nefflen: I want to object to the question. What reports are required by the State Banking Examiner, either under his rules or the law pertaining to banking institutions, have no applicability with respect to the return for valuation purposes under the tax law.

Mr. Gibson: The answer to that is very apparent by reading the statute. The statute provides for the assessment of capital. It is our contention it is a part of capital and should be taken into consideration in making assessments.

A. I do not know without having a copy of the report here what is listed.

Q. Do you have a copy of the examiner's last report in your office?

page 127] A. Yes, sir.

Q. Would it be too much trouble to get that now?

A. It would be quite a little trouble, yes.

The witness was then excused.

GARLAND F. WILKINSON, who heretofore testified as a witness at this hearing, was recalled for further examination and testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. You are the same Mr. Wilkinson who heretofore testified today, I believe?

A. Yes, sir.

Q. Mr. Wilkinson, in determining the valuations of real property, either in Class 2, Class 3 or Class 4, I believe your testimony earlier today related to new structures mainly, is that correct?

A. That is correct, yes, sir.

Q. With respect to property which has been built and been used and has been sold by the owner to another person, how do you arrive at the assessed valuation of that property?

A. When deeds are recorded in the County Clerk's office a Government stamp is affixed thereto in

page 128] the amount of 55 cents for each $500 valuation or less. In other words, if a house sold for $5,000 there would be a $5.50 stamp affixed to the deed. In certifying the transfers to our office the County Clerk shows the amount of the stamps placed at the bottom of the deed. In transferring this property on the land books, for instance, we notice a $5.50 stamp is on the deed and we know that the property sold for in the neighborhood of $5,-

000. If the valuation on our books happened to be $1,800 or so we would probably raise or increase the valuation to an amount between $2,500 and $3,000.

Q. That would be then between 50 and 55% of the sale price of that property as shown by the transfer, which information you get from the U. S. Revenue stamps on the deed?

A. That is right.

Q. Suppose that transfer slip from the County Clerk's office shows a revenue stamp of $10.00. What valuation would that represent as to the valuation for the sale of the property?

A. Between $9,500 and $10,000.

Q. Suppose that property was assessed upon your books to a previous owner at $8,500, what would you fix as the valuation of that property upon the transfer slip coming through the County Clerk's office when you fixed a valuation as to the new owner?

page 129] A. That would depend on the location of the property. If it was sold by a trustee and happened to be in East Charleston, where we have pretty high land values, we might leave it as it was.

Q. You are speaking of a trust deed and that would be a forced sale at public auction?

A. That is correct.

Q. As to a sale that would be voluntary, upon the usual terms at which such property sold, and it had a $10 stamp on it, what would you do?

A. If the locality and the description of the property warranted it we would reduce the assessment to probably $6,000.

Q. In other words, it would be in the range of your 50 to 60% of the market value?

A. That is right.

Q. Is that the practice you have been following for assessing property of that character for the year 1941?

A. That is the practice we have tried to follow, yes, sir.

Q. Not only for 1941 but for the previous years that you have been connected with the assessor's office of Kanawha County?

A. That is right.

The witness was excused.

page 130] Thereupon at 9:30 o'clock, P. M., the hearing was adjourned until 10:00 o'clock, A. M., July 18, 1941.

PROCEEDINGS JULY 18, 1941

The hearing was resumed at 10:00 o'clock, A. M.

Present: As before noted.

Mr. Nefflen: At this time I want to file a protest on behalf of the Empire Federal Savings & Loan Association which is located and doing business in Charleston, Kanawha County; which protest is the same as that of the other protestants here appearing with the exception of the amount of the assessed valuation.

This company will rely upon the evidence taken yesterday on behalf of the other three protestants in support of its protest and will file a separate return showing the valuation which it believes should be placed upon the records for the year 1941.

Mr. Gibson: We have no objection.

RICHARD WATT, who heretofore testified as a witness at this hearing, was recalled for further cross examination and testified as follows:

page 131] CROSS EXAMINATION (Cont'd.)

By Mr. Gibson:

Q. I believe you are the same Mr. Watt who is Secre-

tary of the West Virginia Building & Loan Association and the Capitol Building & Loan Association and testified in this matter on yesterday?

A. Yes, sir.

Q. Mr. Watt, I will hand you your return to the assessor of Kanawha County for the year 1941, which is marked "Watt's Exhibit No. 1", and also "Wilkinson Exhibit No. 5", which is a computation sheet showing assessment of the property of your institution as prepared by representatives of the Tax Department, and I will ask you what amount you returned for assessment purposes on the properties of your association as shown on your return before deducting 30% discount?

A. That is between line 28 and 29?

Q. Yes, sir, net capital.

A. On which return?

Q. On yours.

A. On Watt Exhibit No. 1, $64,641.17.

Q. I will ask you to look at Wilkinson Exhibit No. 5 and give us the amount as shown there as computed by Mr. Van Verth of the Tax Commissioner's office.

page 132] A. Do you refer to line 29?

Q. Line 31.

A. $69,490.

Q. Then there is not much difference between the actual value of the capital of your association as returned by you before taking the 30% discount and the values suggested or placed thereon by the representatives of the Tax Commissioner's office, is that correct?

A. In the neighborhood of $5,000.

Q. Do you have with you, Mr. Watt, the last report of the banking examiner made of the West Virginia Building & Loan Association?

A. Yes, sir.

Q. Will you produce that, please?

A. I will produce it but, if the court please, I object to filing that because it is confidential information and so sent to us. There is nothing to hide, either by myself or the

company, but it is confidential information. I do not want to be placed in the position, either personally or with the company, of being criticized or possibly penalized by the State Banking Department and the Federal Savings & Loan Insurance Corporation.

Commissioner Calvert: Do you want the
page 133] court to rule on whether that shall be introduced as evidence or not?

Mr. Gibson: I do not think it is necessary to rule at this time. I am not going to ask now that it be introduced in evidence and may not do so.

The witness: (reading) "Federal Home Loan Bank Board, Examining Division, District No. 3. Report of examination and audit of West Virginia Building & Loan Association, 226½ Capitol Street, Charleston, West Virginia, made jointly with the West Virginia Department of Banking, as of close of business November 30, 1940. This examination and audit report has been prepared for the Federal Home Loan Bank for supervisory purposes, and a copy is furnished to the Directors and Officers of the Association for their confidential information, with the understanding that it is not to be published, either in whole or in part." That is the heading of the first page.

Mr. Wooddell: I want to object and move to strike it if it does not all go in.

Q. Mr. Watt, I will ask you whether or not the banking examiner's report made of your institution, not only the last one but any report, does not classify reserves and undivided profits as "Other Capital"?

A. No, sir.

Q. It does not?

page 134] A. No, sir.

Q. Is that true of the banking examiner's report which you have in your hand?

A. I am not certain how they classify that. In our estimation it is not classified as "Capital".

Q. I do not ask you how in your estimation it is classi-

fied. I ask you if the banking examiner's report did not list it under "other capital"?

Mr. Nefflen: The question purports to bring into this record a part of the examination which he says is confidential. I want to object to it.

President Brotherton: The objection is sustained. (Exception).

Q. Mr. Watt, I believe you are also secretary of the Capitol Building & Loan Association?

A. Yes, sir.

Q. I will ask you whether or not it is not your opinion, and if you did not so report to the banking examiner, that this association expected to pay 120 to 125 cents on the dollar when its affairs were wound up and liquidated?

Mr. Nefflen: I want to object to that question. In support of my objection if it is necessary, unless the Tax Commissioner's office will admit it, I believe that

page 135] this particular company last named is in process of liquidation and is not a going concern. If it is a company in liquidation the value of its stock would not be comparable with the value of the stock of a going concern doing business as are any of the four protestants here. They are under the Federal law and the company he named is under the State law, and under the State law there is nothing requiring them or restricting them to the payment of only 100 cents on the dollar of the capital stock. I want the record to show that the counsel for the State Tax Commissioner's office agree that the company is in voluntary liquidiation and is not a going concern. A company that is in liquidation does not have the benefit of Federal insurance as the four protestants here have, therefore the stockholders of a company in process of liquidation do not have the same protection as do the four protestants here.

Mr. Gibson: If the Court please, before replying to Mr. Nefflen's objection I want to ask the witness two or three questions and then make a reply.

President Brotherton: Very well.

Q. Mr. Watt, I believe that the Capitol Building & Loan Association is in voluntary liquidation?

A. Yes, sir.

Q. You were not placed under any restric-

page 136] tion by the State Banking Department?

A. No, it is not to make any loans. We cannot do any more business.

Q. Was that after you started your voluntary liquidation?

A. I am not certain. That has been several years ago. We had several conferences with the bank examiner.

Q. Have you surrendered your charter?

A. I think so.

Mr. Nefflen: I want to make the further objection that the cross examination is now entering upon a field that was not covered by the examination in chief and is beyond the purpose of cross examination in that it is going into new matter.

Mr. Gibson: The question is perfectly proper. We do not care if it is new matter or not. If it is new matter we are bound by it.

Commissioner Calvert: It seems that the Capitol Building & Loan Association is not a party to this suit and they do not protest any taxes.

Mr. Wooddell: They introduced evidence yesterday as to the loan companies, and they are not parties to this suit.

President Brotherton: The objection is sustained. (Exception).

(The witness was then excused.)

page 137] GARLAND F. WILKINSON was again recalled to the witness stand for further examination and testified as follows:

CROSS EXAMINATION

By Mr. Gibson:

Q. You are the same Mr. Wilkinson who testified in this matter on yesterday, are you not?

A Yes, sir.

Q. Mr. Wilkinson, are you familiar with the section of the law under which building and loan associations are assessed in the State of West Virginia.

A. Yes, sir.

Q. Are you familiar with the methods suggested by the Tax Commissioner for the assessment of all financial institutions in the state?

A. Yes, sir.

Q. I will ask you whether or not that method does not produce an assessment of the true and actual value?

A. I do not believe so.

Q. For what reason?

A. Because of the fact that the law says that the capital of every building and loan and Federal loan association shall be assessed as evidenced by its investment shares and investment account, and that the assessors page 138] shall take into consideration earned reserves and undivided profit. In several instances Mr Van Verth of your office has added other accounts than those earned and has added more than the capital or investment shares or investment accounts. In reference to Wilkinson Exhibit No. 5 deferred loans these have been added and uncollected interest, which I do not consider as earned reserves. In other instances reserves have been added that have been set up by building and loan associations for the protection of their capital.

Q. Now, Mr. Wilkinson, you just testified, I believe, that the statute providing for or covering the assessment of building and loan and Federal savings loan associations does provide that you shall assess the capital as evidenced by their investment shares and investment accounts and that, further, the assessor shall take into consideration re-

serves and undivided profits?

A. That is correct.

Q. You agree that any method that does that complies with the statute, is that correct?

A. It complies with the statute partially.

Q. What do you mean by that?

A. I mean that the statute further provides that the real and actual value of such capital, represented

page 139] by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made by such association to any official of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor as hereinafter provided, or from other trustworthy sources.

Q. Mr. Wilkinson, just how would you go about assessing the property of a building and loan or Federal loan association under the statute? I wish you would explain that to us in detail.

A. Well, I would take the investment shares and investment account, figure their undivided profits and probably their reserves for contingency, and allow 30% discount as an equalization factor to other classes of property and other properties in the same classification.

Q. The law from which you have been reading and the section which covers the assessment of building and loan associations and Federal savings loan associations is what is commonly known as House Bill 424, passed by the Regular Session 1939 State Legislature, better known and codified as section 11 to 14 (a), of article 3, chapter 11, West Virginia Code. I will ask you to take that

page 140] statute and read it and see if there is anything provided in there about taking a 30% discount.

A. There is probably nothing in that particular statute. However, the Constitution, under the new tax limitation amendment, provides that no one class of property shall be

assessed greater than any other class.

Q. Is that contained in the section governing building and loan associations?

A. It is in this respect, that I quoted in the law governing building and loan associations that the law provides they shall be assessed at their true and actual value according to the rules prescribed by this chapter and does not limit it to the assessment in this particular statute altogether.

Q. I believe the chapter referred to is chapter 11 of the West Virginia Code?

A. That is correct.

Q. Will you point out in chapter 11, West Virginia Code, any section, sentence, or any part thereof which provides for a 30% discount on the assessment of building and loan associations or any other associations?

A. No, sir, there is no 30% mentioned in chapter 11 that I know of. That is merely the figure of percentage we have used in trying to ascertain the actual value.

page 141] Q. Then in testifying how you make an assessment in compliance with the statute governing building and loan associations you testify you would take into consideration investment shares, investment accounts, undivided profits and contingent reserves, and take a 30% discount in arriving at the assessment. Would that follow the statute?

Mr. Nefflen: If your Honors please, I want to object to this line of questioning on the ground that it calls for a legal conclusion from this witness and not a question of fact. Also that the decisions of both of the courts of last resort of West Virginia, the Supreme Court of Appeals and the Supreme Court of the United States, in interpreting the provision of the 14th Amendment to the Constitution of the United States, provide that a property owner has a right to demand that his property be reduced to the same level of valuation as other properties in making the assessed valuation; also the provision of section 1, article 10 of

the Constitution of the United States, commonly known as the "tax limitation amendment".

A. I wish to answer the question and to make reference to Wilkinson Exhibit No. 10 under "Instructions". "The Assessor will find true and actual values, but the following may be used as guides for ascertaining value". This is a form printed by the Tax Commissioner's office
page 142] and used throughout the State of West Virginia and adopted by the West Virginia State Assessors Association.

Q. I hand you House Bill 424, passed by the 1939 West Virginia Legislature, which act amends article 3, chapter 11 of the Code of West Virginia, 1931, as amended, by amending and reenacting section 12 thereof and by adding a new section to be designated as section 14-a, all relating to the assessment of properties of private corporations, building and loan associations and Federal savings and loan associations, and ask you to refer to section 14 (a) which covers or governs the assessment of the capital and reality of building and loan associations, and ask you to state whether or not any place in there you find any provision made for a 30% discount.

Mr. Nefflen: Objection.

A. There is not.

Q. Then if you were making an assessment in compliance with the statute referred to you would not take the 30% discount, is that correct?

Mr. Nefflen: I object for the reason that the question refers only to the statute and does not take into consideration the practice in Kanawha County and the decisions of the court, both Federal and State, that a property owner has a right to have his property reduced to the
page 143] same percentage of valuation as other property in that same classification.

Mr. Gibson: I have not asked this witness anything about what you have talked about. I have simply asked him

what sort of assessment he would make under the statute which provides for the assessment of building and loan associations.

A. No, sir, that is not correct.

President Brotherton: Did you not ask him that question when you asked him the question previous to this?

Mr. Gibson: He said he would take the 30% discount.

President Brotherton: Aren't you asking him the same question again?

Mr. Gibson: I do not think so. I asked him if the statute provided for a 30% discount and he said no. Now I am asking him if in making an assessment in compliance with that section he would take a 30% discount.

Q. I will ask you this question. If you would take the 30% discount would that be in compliance with section 14 (a) referred to?

A. I have referred to the rules prescribed by this chapter, that it would be compatible in as much as this particular section generalizes the assessments to include all of chapter 11.

Q. And you further testified that chapter
page 144] 11 no where in it contained any provision with reference to a 30% discount?

A. For the particular discount of 30%, yes.

Q. Does not the statute provide for the assessment of building and loan associations and say you shall take investment accounts, investments shares, undivided profits and earned reserves into consideration in determining the properties of a building and loan association or a federal savings and loan association?

A. Yes, it provides that they should be given consideration.

Q. Then if a method which uses the investment shares and investment account and takes into consideration undivided profits and earned reserves, would that comply with the statute?

Mr. Nefflen: I want to object as that calls for a legal conclusion.

Mr. Gibson: In reply to that I want to state that about all that I have been able to get out of this witness up to this time is legal conclusions.

A. It would, partially. However, the actual sales of such investment shares, investment accounts and other items from trustworthy sources may also be taken into consideration.

Q. Did you take into consideration the sale
page 145] of shares of building and loan associations and federal savings and loan associations in making your assessments?

A. Yes, sir.

Q. Can you tell us any particular association in which you have any data on the value as determined by the sales of their shares and whether or not they were bona fide sales?

A. Yes, sir. My mother-in-law recently purchased some shares from the Charleston Federal Savings & Loan Association and she paid $100 per share. Our Masonic Lodge also recently purchased shares of stock in that company and paid $100 a share.

Q. When were those purchased?

A. I do not remember exactly.

Q. In what year?

A. In 1941 as regards my mother-in-law; and I believe the purchase by Charleston Lodge 153 was also in 1941.

Q. You have not yet had an opportunity to take those into consideration in determining the assessments of any of these associations, have you?

A. Yes, sir.

Q. Were those made prior to January 1, 1941, or since January 1, 1941?

A. Since January 1, 1941. However, the
page 146] assessments are not generally made on January 1.

Q. Not actually?

A. Not actually.

Q. Do you have with you the return of the Charleston Building & Loan Association for the year 1939?

A. No, sir.

Q. Could you get that?

A. No, sir.

Q. Could you get your personal property book for the year 1939 showing the assesment made against the Charleston Building & Loan Association?

A. Yes, sir.

Q. Will you do that, please?

Mr. Nefflen: I want to show an objection to this line of inquiry and that it has gone into a liquidating company, which is not comparable to a going concern. In addition the question purports to go into the assessed valuation of this liquidating company for previous years, which are res adjudicata and which are not any proper comparison of the assessed valuation of properties for the calendar year 1941. I want to further say that the return for the calendar year 1939 was under the law prior to the one now in existence are shown by section 14 (a), chapter 11, Code, page 147] passed about March, 1939, and effective 90 days after its passage, and it is not applicable to assessments for the year 1939.

President Brotherton: Mr. Gibson, is the information you are now seeking that of a liquidating company?

Mr. Gibson: I think it is a liquidating company.

President Brotherton: The objection is sustained.

(Exception)

Mr. Gibson: The purpose of the testimony which we propose to develop by this line of inquiry is for comparative purposes to show what we contend is the true and actual value of the properties of all building and loan associations and Federal savings and loan associations in Kanawha County as shown by computation sheets made by representatives of the Tax Commissioner's office in compliance with

the statute and comparing values obtained thereby with the values placed on the properties of such associations for the year 1940, and showing the percentage of discount, or otherwise, on this basis for each association.

At this point I desire to vouch the record and say that if this witness were permitted to answer these questions relating to these various institutions his answer would be—

Mr. Nefflen: (interposing) I want to show an objection to counsel making any statement as to what

page 148] the witness would testify if he were permitted to testify.

Mr. Gibson: —in comparing actual assessed value to the value as shown by the computation sheets of the Charleston Building & Loan Association for the year 1939 was in the amount of $420,230, whereas it was assessed at $90,000, which is a 78.6% discount. The value of the properties of the same association for the year 1940 as shown on such computation sheet is $376,410, and the assessed value of such properties was $234,200, or a discount for the year 1940 having been given of 37.8%. Also that the value of the properties of the Empire Building & Loan Association for the year 1940 as shown by such computation sheet was $473,130, and the assessed value was $324,400, or a discount of 31.4% having been given on the properties of that association. Also that the properties of the Colonial Building & Loan Association as shown on such computation sheet for the year 1940 were valued at $21,330, whereas the assessment was $31,200, or that the properties of this association for the year were assessed at 46.3% more than the true and actual values of such properties as shown by the computation sheet. Also that the value of the properties of the Empire Building & Loan Association for the year 1940 as shown by such computation sheets was $331,500, and the assessed value was $173,500; a discount of 47.-

page 149] 7% having been taken from the properties of this association for assessment purposes. Also that the properties of the Kanawha Building & Loan Association were valued for the year 1940 by such computation

sheet at $43,300, whereas the assessment was $56,900, resulting in an assessment of 31.4% above the true and actual value. Also that the properties of the Liberty Building & Loan Association as shown on such computation sheet for the year 1940 were valued at $11,200, whereas the assessed value was $21,300, resulting in an assessment of 90.2% above the true and actual value. Also that the properties of the Community Savings & Loan Company as shown by such computation sheet for the year 1940 were $160,860, where as the assessment was $155,700, resulting in a discount of .6%. Also that the properties of the Industrial Savings & Loan Company as shown by such computation sheet for the year 1940 were $31,570, whereas the assessed value was $45,360, resulting in an assessment of 43.6% above the true and actual value. Also that the property of the Mutual Savings & Loan Association as shown by such computation sheet for the year 1940 was $24,490, and that the assessment was $24,250, resulting in an assessment of about par. Also that the properties of the Southeastern Savings & Loan Company for the year 1940 as shown by such computation sheet were valued at $144,-

page 150] 520, whereas the assessment was $112,700, resulting in a 22.1% discount on the properties of that association for the year 1940. Also that the value of the property of the Equity Savings & Loan Company for the year 1940 as shown by such computation sheet was $89,080, whereas the assessment against the property of this association for the year 1940 was $129,500, resulting in an assessment of 45% above the true and actual value as shown by such computation sheet.

Mr. Nefflen: I move to strike the statement of counsel who vouched the record for the reason that such statement is not the testimony of the witness who is present before the Board of Review and Equalization and, further, there is nothing in the record to show the assets of the several companies mentioned for the several years designated, nor that the computation sheets referred to in the statement of

counsel for the several years regarding the several companies were ever before the assessor of Kanawha County for those respective years; and no evidence shown what actual returns, if any, were made by those same companies for those several years referred to by counsel for the State Tax Commissioner.

Mr Gibson: In reply to that statement I would like to say that is it necessary for the assessors to assess all property, whether it is returned or not; and, fur-
page 151] ther, that the computation sheets referred to in the statement of counsel in vouching the record will be filed in this matter and marked for the purpose of identification and cross examination if counsel so desires.

For the record, it was understood at the inception of the case now being heard by the County Court of Kanawha County that it was the purpose of all parties concerned and interested to develop and present a representative case which would be expected to be taken to the Supreme Court of West Virginia for a final decision by either the protestants or the Tax Commissioner's office.

The statute which has been referred to, which covers the assessment of all building and loan associations and Federal savings and loan associations applies to all of those alike, regardless of whether they may be liquidating or whether they may be active going concerns. Our only purpose in introducing the testimony as to those concerns is to include every building and loan association and every Federal savings and loan association in Kanawha County because it has been agreed that they will stand or fall by the decision which is rendered by the Supreme Court in this case.

The protestants have picked out two or three particular institutions and we are simply taking these in-
page 152] stitutions doing business in Kanawha County regardless of whether they are doing business as active going concerns or as liquidating concerns. We propose to show a comparison of the manner in which they

have been assessed in Kanawha County, which we think is quite pertinent and quite proper.

Mr. Nefflen: Counsel for the protestants states that while it is true that this is to be a representative case yet a company in process of liquidation such as the one he referred to, the Charleston Building & Loan Association, is not comparable with that of the protesting companies, which are going concerns and are subject to different laws in the conduct of their business, in that they have certain insurance protection, both Federal and State associations, under the Federal law in regard to insurance. And, as a further objection, that the cross examination is now going into matters which were not gone into in the examination in chief, and that such examination should be confined to matters gone into on direct examination.

I would like to further add that liquidating companies are operating under different restrictions and not under the same restrictions as these going concerns.

Mr. Gibson: I want to object and to correct Mr. Nefflen in his statement to the extent that there are a number of building and loan associations in the process of
page 153] liquidation in the State of West Virginia that are not operating under any restrictions imposed by the State Banking Department. They are operating under self-imposed restrictions and they are still amenable to the tax laws of the State even though in liquidation; and that for the purpose of comparison with respect to the manner of assessment for tax purposes and the factors considered by the assessors or deputies in arriving at the valuation, the evidence sought to be introduced is proper.

Thereupon at 12:00 o'clock, Noon, a recess was taken until 1:30 o'clock, P. M.

AFTERNOON SESSION

The hearing was resumed at 1:30 o'clock, P. M.

Present: As before noted and James Kay Thomas, Attorney at Law, appearing for the Empire Savings & Loan Company of Charleston, West Virginia.

Mr. Thomas: I appear on behalf of the Empire Savings & Loan Company of Charleston, West Virginia, and herewith tender and ask leave to file its petition and protest, and also file its return on S.T.C.O. Form 4-a for the year 1941, duly executed and sworn to by its secretary-treasurer, and ask that the same be received in evi-
page 154] dence and marked "Empire Savings & Loan Company Exhibit No. 1."

President Brotherton: That may be done.

GARLAND F. WILKINSON again resumed the witness stand for further examination and testified as follows:

CROSS EXAMINATION (Cont'd.)

By Mr. Gibson:

Q. Mr. Wilkinson, I believe you have previousiy testified that your practice in Kanawha County was to assess property in general, with the exception of money, at about 70% of its actual value, or to allow a discount of approximately 30%, is that correct?

A. For intangibles, yes, sir.

Q. Do you have the return of the St. Albans Building & Loan Association for the year 1940?

A. Yes, sir.

Q. The St. Albans Building & Loan Association is an active going concern, is it not, and is not in process of liquidation?

A. I would not know that, sir.

Q. Did you assess that association last year?

A. No, sir.

Q. Were its properties assessed by the Kanawha County assessor's office?

page 155] A. As near as I can ascertain the return

was filed by the St. Albans Building & Loan Association and was given to Mr. Harvey Rogers, our deputy assessor in that particular district.

Q. Do you know whether an assessment was made against that company for the year 1940?

A. Yes, sir, it was.

Q. I will ask you to take that return and state whether it is not true that the capital of that association for the year 1940 was assessed at the true and actual value or without any discount being given.

Mr. Nefflen: I want the record to show that the protestants object for the same reason as heretofore. If this concern is in process of liquidation, there is no comparison between the just valuation of a going concern under the restrictions under which they have to operate and those associations that are in process of liquidation.

Mr. Gibson: We are ready to prove that this is a going concern.

Mr. Nefflen: I again object because it is going outside of matters on direct examination and insist that if he goes into new matters he should make this witness his own witness on that point.

President Brotherton: Overruled.

(Exception)

page 156] Mr. Gibson: I simply propose to show that, whereas the evidence has already been introduced by Mr. Wilkinson on direct examination that he gave a 30% discount in Kanawha County.

(Overruled; exception).

A. I cannot answer that question except to read what is shown on the tax return as submitted by the company.

Q. Do you know whether or not that showed the actual assessment placed against the company?

A. I do. The assessment placed against the company was $17,800.

Q. Which is the actual value of the capital as returned by the company in that return, is that correct?

A. If you admit that no undivided profits or reserves are applicable to the company, yes.

Q. Answer the question, please. I am asking you what the returns show.

A. The only way I can answer it is to say that the company reported fully paid stock in the amount of $17,700 and installment stock in the amount $126.69, a total of $17,826.69; and an assessment was placed in the amount of $17,800 in St. Albans District.

Q. Is there anything appearing from that return or on that return indicating a 30% discount or reduction?

A. No, there is not.

page 157] Q. Then if your assessment was made in the amount of $17,800 against the property of that association no discount was given, is that correct?

A. That is correct, yes, sir.

Q. I hand you here a computation sheet made up by representatives of the Tax Commissioner's office of the property of the Charleston Federal Savings & Loan Association for the year 1940 and ask you to examine that and tell us whether or not the computation as there made up follows the statute relative to the matter in which the properties of building and loan and Federal savings and loan associations are to be assessed?

A. Is this the same form that you have been using for 1941?

Q. It is.

A. I believe I answered a similar question this morning regarding this particular form that you have, did I not? It was to be taken into consideration in ariving at assessments.

Q. Suppose you either answer my question yes or no and then make any explanation you desire.

A. In other words, if you wish me to say that this is the only procedure in valuing a building and loan

page 158] association, I will say no.

Q. Will you answer my previous question?

A. I do not know.

Q. Assuming that that computation sheet contains a proper assessment or shows a proper assessment for the properties of the Charleston Federal Savings & Loan Association for the year 1940, and we contend it does, I will ask you what the total assessed valuation of the property of that company would be for the year 1940 as shown by that sheet?

A. As shown by this sheet on line 31 the assessed value would be $727,220.

Q. What was the actual assessment which you made against the properties of that company for the year $1940?

A. $482,300.

Q. Mr. Wilkinson, what percentage is the assessed value of the property of that association for the year 1940 of the true and actual values, which we contend is shown by that sheet? In other words, what percentage of discount did you give that association for the year 1940?

Mr. Nefflen: Objection as not being a fair comparison. In order to determine the percentage you have to take what the return was that was made by the association for 1940 and then determine the valuation for 1940 and

page 159] find the percentage of the assessed value.

Mr. Gibson: In reply to that I will say that Mr. Wilkinson has just now testified that he does not have the return of the Charleston Federal Savings & Loan Association for the year 1940, or at least that he could not locate it at this time. Let the record show that we could not compare it with the return for 1940 if we wanted to, for the simple reason that Mr. Wilkinson has advised us that he could not locate the return of that company for the year 1940.

A. It was in our files a few days ago.

Q. I will repeat the previous question.

A. I did not give the company any discount in ratio to this particular sheet. However, if you roughly estimate the difference between the assessment and what this particular sheet has submitted by you shows, I would say that

the difference would be in the amount of approximately 30%.

Q. If you had time, or would take time, to actually compute that difference and find the discount which you gave upon the property of the association for the year 1940 and it was actually 33.7%, would you assume that your guess was a guess and incorrect to that extent?

Mr. Nefflen: Same objection.

A. Yes, based upon your total as shown on this sheet.

Q. And, of course, assuming that our com-
page 160] putation is correct?

A. That is right.

Q. Will you file that computation as part of your testimony and mark it for identification as Wilkinson Exhibit No. 11?

A. No, sir, I do not know anything about this computation.

The sheet referred to was then received and marked "Wilkinson Exhibit No. 11" for identification.

WILKINSON EXHIBIT No. 11, FILED

Q. Mr. Wilkinson, I hand you a computation sheet for the Empire Federal Savings & Loan Association which is similar to the computation sheet I just handed you for the Charleston Federal Savings & Loan Association and marked, only for identification purposes, "Wilkinson Exhibit No. 11", and ask you what the actual value of the property of that association would be for the year 1940 as shown by that computation sheet?

Mr. Nefflen: The same objection for the same reasons as were assigned with respect to the sheet marked for identification "Wilkinson Exhibit No. 11".

A. As shown on the sheet handed me, Mr. Gibson, your

total is $234,655.

Q. What was the assessed valuation of the
page 161] properties of that association for the year 1940?

A. The amount was $135,300.

Q. What per cent of the assessed value is the value as shown by that computation sheet or, in other words, what discount did you give on the properties of the Empire Federal Savings & Loan Association for the year 1940?

Mr. Nefflen: The same objection as before. You mean the true and actual value and not the assessed value, do you not?

Mr. Gibson: That is right.

A. You mean the assessed valuation in the computation on your sheet?

Q. That is right.

A. You have the percentage figured out; what is it?

Q. If I advised you that this had been carefully computed and showed a discount of 42.3% would you be willing to let that be your answer subject to checking?

A. I would guess that you are very nearly right, Mr. Gibson, yes, sir.

Q. Do you have the return made by the Empire Federal Savings & Loan Association for the year 1940?

A. Yes, sir.

Q. Will you mark the computation sheet for
page 162] the Empire Federal Savings & Loan Association, for the purpose of identification only, "Wilkinson Exhibit No. 12"?

A. Very well.

The computation sheet referred to was then received and marked "Wilkinson Exhibit No. 12 for identification".

WILKINSON EXHIBIT No. 12, FILED

Q. I hand you a computation sheet prepared by representaive of the Tax Commissioner's office for the First Fed-

eral Savings & Loan Association for the year 1940 and ask you what the value of the properties of that association was for the year 1940 as shown by that sheet.

Mr. Nefflen: The same objection as to Wilkinson Exhibit No. 11.

A. $200,590.

Q. What was the assessment which you placed against the properties of that association for the year 1940?

A. $160,300.

Q. What percentage of discount did you allow or take on the properties of that association for the year 1940 as compared with the values shown on the computation sheet?

Mr. Nefflen: The same objection as was heretofore made.

A. According to your computation the figure would be 20.1% discount.

page 163] Q. I believe you have there the return for the First Federal Savings & Loan Association for the year 1940, is that correct?

A. That is correct.

Q. I believe there is shown in that return with respect to the assessed value of real estate the amount of $1,423.41 (?), whereas in the computation sheet prepared by representatives of the Tax Commissioner the assessed value of the real estate is shown as $16,150. is that correct?

A. That is correct.

Q. Assuming that the assessed value of the real estate as shown by the computation sheet is incorrect, and that the assessed value of the real estate as shown on the return filed by the association is correct, then your percentage of discount would be even greater than 20%, would it not?

A. The percentage would be approximately 30%, yes, sir.

Q. I believe your last answer was that if the assessed value of the real estate was as shown in the return in the amount of $1,423.41 (?) instead of the amount shown in

the computation sheet of $16,500, the percentage of discount would be greater and would roughly be around 30%. I will ask you if it would not actually be around 25%?

A. I would not know, Mr. Gibson.

page 164] The sheet last referred to was then offered in evidence and marked "Wilkinson Exhibit No. 13 for identification".

WILKINSON EXHIBIT No. 13, FILED

Q. I hand you a similar computation sheet for the West Virginia Building & Loan Association prepared by representatives of the Tax Commissioner's office and purporting to show the true and actual value of the properties of that association for the year 1940 and ask you what the value of such properties are as shown by that sheet?

Mr. Nefflen: Same objection as to the computation sheet as it is not a paper on file with the assessor's office and is a fugitive paper.

A. The amount is $49,716.55.

Q. What was the assessed value of the properties of that association as made by the assessor's office of Kanawha County for the year 1940?

A. $36,950.

Q. What percentage of discount was given on the property of that association comparing the assessed value to the value shown on the computation sheet?

Mr. Nefflen: Same objection as to Wilkinson Exhibit No. 11 for identification.

page 165] A. 26%. I would like to make the observation, if I may, Mr. Gibson. I have noticed that on your computation sheets there is probably an explanation for the variance in percentage in as much as you have added delinquent interest and Federal insurance reserves as a capital item, whereas I have not.

Q. Is it your opinion that delinquent or uncollected interest is not an asset?

A. It is an asset; it is not an earned reserve.

Q. It is an account receivable as of the time the balance sheet was prepared?

A. No, it is not, in my opinion.

Q. It is interest due the association which has not been collected as of that time?

A. It is a part of the gross worth of the company, yes; but of the capital or any earned reserves, I would say it is not.

The paper last referred to was then offered in evidence and marked "Wilkinson Exhibit No. 14 for identification".

WILKINSON EXHIBIT No. 14, FILED

Q. Mr. Wilkinson, did you take any discount from the Class 1 properties of State and National banks in making your assessments for the year 1940?

A. No, sir.

Q. Did you take any discount from the Class 1 properties of State and National banks in making your assessments for the year 1941?

page 166]

A. No, sir.

Q. Mr. Wilkinson, I believe it appears at various places in this record that the computation sheets prepared by representatives of the Tax Commissioner for these various financial institutions have some times been referred to as "Returns". I believe they were not presented to you or to the associations as returns but as the valuation suggested by representatives of the Tax Commissioner as being the proper valuations, is not that correct?

A. That is correct.

Q. Have you ever assessed in Kanawha County contracts or certificates, whichever you prefer to call them, issued by investors' syndicates or corporations or what are commonly known as investment contracts?

A. Yes, sir.

Q. How do you determine the value of those for assessment purposes?

A. We attempted to value them at approximately 80% of their value, depending on the length of the contract, how near it was paid out and so on and so forth.

Q. I believe there is either appended to or
page 167] incorporated in those contracts a schedule showing the cash surrender of each such contract as of a certain year, is that correct?

A. I am not certain as to that. I have never seen any of the contracts.

Q. You do not then place your valuation on that basis?

A. No.

Q. If you have never seen of the contracts how would you determine what value to put on them?

A. We have very few of those contracts; in fact I do not recollect having assessed one for the past several years. At that time I remember discussing a contract as regarding the amount of money to be paid, in as much as it could not be cashed in for its full value at any particular time. At that time, as nearly as I remember, we assessed them at about 80% of the cash value or the fully paid in.

Q. 80% of the value that was paid in?

A. Yes. However, as I say, it has been several years since I assessed a contract of that nature. If there are any in Kanawha County today they are not being turned in to my knowledge.

Q. If the amount that was paid in on any such contracts exceeded the amount of the cash surrender value as of January 1 of any year which the owner of such
page 168] contract could receive, then your assessment may have been in excess of 80% of that actual value, is that correct?

A. It may have been, I do not remember.

Q. You testified yesterday that you valued property in one district at one percentage of discount and in other dis-

tricts at a different percentage, is that correct?

A. In a sense, yes, in as much as different counties are assessed differently and different districts are assessed differently. We have in this county manufacturing districts, farming districts, industrial districts and oil and gas districts. Each particular locality and municipality is valued differently.

Q. I believe you testified that the valuation in various districts ranged from 25% of the true and actual value to 80% in other districts, is that correct?

A. I was referring to the economic conditions at this particular time.

Q. You can answer that question yes or no, can't you?

A. Because of the economic conditions that existed or exist in this particular county at this particular time, yes. I might add that it has been the policy of the assessors in placing property on the real estate books to place such values on that real estate as to remain at a con-

page 169] stant figure through a period of years because of the fact that the various levying bodies depend upon a more or less constant valuation for their revenue. In my opinion it would not be very good policy to place any property on the land books at 100% of its cost price and then have to allow depreciation on that particular building year after year, thereby lowering your valuations and not give any constant values to the various levying bodies. We attempt to depreciate a building for several years when it is placed upon our books and try to keep our valuations in this county as nearly constant as we possibly can.

Q. Regardless of the reason for it the fact does remain, according to your testimony, that you have no uniformity with respect to the percentage of the true and actual value at which you assess properties through the county, is not that correct?

A. And that is not correct as regards personal property or buildings. It probably is correct as regards the assessment values of land and lots. By that I mean that we may

have some farm land in a particular locality that would probably sell on some occasions for as much as $100 an acre, and we may have them assessed at $20 per acre. On the other hand, we may have some lots in the City of Charleston that we have assessed at $100 per front foot

page 170] and the selling price may be $100 or $125 per front foot.

Q. Now, Mr. Wilkinson, in testifying that you assess different classes of property at various percentages of the true and actual value, is it not necessary first to establish the true and accurate value of such properties in order to determine the true and actual value at which you state you assess them?

A. We attempt to establish the cost price and then to establish our assessment value accordingly.

Q. It is necessary then to establish your true and actual value first, is it not, or what you consider as a proper value?

A. I will say "a proper value", yes.

Q. Mr. Wilkinson, further with reference to the percentages of assessed value used by you in relation to the true and actual vaue, I believe that you testified that you valued all accounts receivable at 70% of the face and installment accounts at 65% of the face or book value; livestock at 50% of the purchase value, if it could be established, and if not, it was left to the judgment of the deputy assessor who was assessing such property; and that you assessed bonds and notes at 70% of face value. What particular type of bonds did you have reference to or what bonds do you have here to assess?

A. If I said face value I meant to say mar-

page 171] ket value in the case of bonds. I have reference to bonds of private corporations, not United States bonds.

Q. You mean taxable bonds, is that correct?

A. Taxable bonds, yes.

Q. How do you establish the market value of such bonds?

A. Well, in various ways. We would have to take some particular bonds and go into it before I would be able to establish their value.

Q. Is it not true that you would have some bonds it would be impossible to establish the market value of for the reason that there are no sales or exchanges to determine the market value?

A. I just recently made an assessment of some bonds. Before I could ascertain the market value of those bonds it was necessary to write to the Chase National Bank in New York City and it quoted the market price on each of those bonds and we were able to set a value thereon. This was a particular assessment for 1941. I will be glad to show it to you in my office.

Q. You do occasionally have bonds upon which it is difficult, if not impossible, to establish the market value?

A. Yes.

Q. Then how do you assess those?

page 172] A. The best way we know how.

Q. In percentages, can you tell me?

A. I would not know. We try to put the best value we know how on them. I might add, Mr. Gibson, that when I run into difficulties of that nature I generally call on you or one of your assistants for their expert advice.

Q. I would like to ask you if you ever follow it after you receive it?

A. In most instances I have, Mr. Gibson.

Q. Do you have a minimum assessment in Kanawha County?

A. On real estate?

Q. On either real or personal property.

A. We try to maintain a minimum of $50.

Q. On personal property?

A. On personal property as well as on real estate, yes, sir.

Q. In testifying yesterday about the manner or method you followed in assessing household furniture you used the

example that if in a five-room house you figured he had about $250 worth of furniture, and you would take off the $200 exemption and he would probably be assessed at about $50. If you have a $50 minimum, in that instance he would not be assessed anything, would he?

page 173] A. No, he would be assessed at $50. We have a great many $50 assessments on our books.

Q. Yesterday you testified about valuations of the properties of the Charleston Finance Company, Colonial Finance Company, Home Finance Company and Household Finance Corporation for the year 1941. Do you have the returns of those various companies for the year 1941?

A. I have the computation sheets as provided by your office.

Q. That is not what I asked you.

A. I do not have any tax returns by the companies.

Q. For the purpose of refreshing my memory on it, did you testify you did place assessments on the properties of those various companies by the computation sheets furnished by the Tax Commissioner?

A. Yes, sir.

Q. In the event such sheets had not been furnished and in the absence of any returns they had not filed how would you make the assessments?

A. I would call the companies up and ask them to file returns.

Q. They have not to this date?

page 174] A. No, sir; I have not bothered to call them because I was instructed to call them if they did not use these figures. It would not make any difference what returns they filed.

Q. Did not all of these four companies which I just inquired about, commonly known as "small loan companies" file with you last year?

A. I do not know whether they filed but I have the returns.

Q. Did you make up the returns from the information

they gave you or did they actually file them?

A. I do not remember, it has been over a year ago. I have one here for the Home Finance Company which was filed and signed by their president, Mr. R. J. Goff, filed April 25, 1940.

Q. Do you know about the others?

A. I have one here from the Charleston Finance Company, signed by their treasurer and filed April 8, 1940. Also one from the Colonial Building & Loan Association, signed by their Treasurer and Manager, Mr. George W. Beaire. I do not seem to have the others here with me. They are probably down in the office.

Q. You testified previously that the assessors during their annual meeting discussed the assessment of various properties and the percentage of such assessments to the true and actual value. I will ask you to state

page 175] whether or not the Tax Commissioner's office has ever instructed the assessors to assess any property at any percentage of the true and actual value?

A. Yes.

Q. What?

A. Gas wells and oil wells.

Q. Was that done by written instructions to assessors generally, or verbal instructions, or how?

A. Verbal instructions and written instructions.

Q. What was that for?

A. Instructions in the case of oil wells.

Q. Do you have that instruction?

A. I have an instruction asking me to assess oil wells at $1,000 per barrel.

Q. I will admit that such instruction was issued, a copy of which I have here. Is there anything in such instruction about assessing at the true and actual value?

A. No, but it is a percentage of the actual value.

Q. That is your opinion?

A. Yes, sir.

Q. The purpose of it was to assure uniformity from

what information the tax commissioner had about the true and actual value, is that correct?

page 176] A. Yes, sir.

Q. With respect to Form 3-c which you testified about previously and which is filed as Wilkinson Exhibit No. 10, I believe you testified that the majority of the assessors throughout the state used that instruction, is that correct?

A. They were using it the last time I contacted them; yes, sir.

Q. Do you know actually of your own knowledge how many assessors in the State of West Virginia actually did use that instruction in making their assessments?

A. I do not know, no, sir. However, from talking with the assessors at our association meetings I would say that the majority of the assessors, especially in the larger counties, used that instruction implicity.

Q. I will ask you whether or not there is anything in that exhibit indicating that the Tax Commissioner or the Tax Commissioner's office ever instructed assessors to use any percentage of the true and actual value in making assessments?

A. No, sir, except that the printed form was sent by them and they distributed it to us.

Q. I will ask you if the first line of such instruction does not read as follows: "The assessor will find the true and actual values, but the following may be

page 177] used as guides for ascertaining value"?

A. That is correct.

Q. I believe you also testified that the schedule appearing on the front of that form showing the guides which might be used in assessing property does not now appear on the new form of the same type?

A. It does not appear on the form we received for this year.

Q. As testified previously that you did not know the assessed valuation of the properties of at least two build-

ings and loan associations for the year 1941, and you further testified that had you not used the values suggested and requested by the Tax Commissioner that the valuation would have been approximately 30% less than the valuation actually made against the properties of such associations for the year 1941. I will ask you how you determined that when, according to your testimony, you had not examined the returns, or at least the returns of some of these associations, for the year 1941?

A. Because it has been our regular procedure, and we have attempted to adhere in our business in having uniformity between building and loan companies, small loan companies, wholesale houses, garages, grocery

page 178] stores, hotels, insurance agencies and various other offices and business of all kinds.

Q. Did you have returns from all these associations for the year 1941 at the time your County Court started sitting as a Board of Equalization and Review?

A. No, sir.

Q. Do you now have returns from all such associations?

A. No, sir. However, I do have these sheets provided by the Tax Commissioner's office.

Q. How would you go about making assessments against the property of these institutions from which you did not have returns?

A. I had intended to use the sheets as provided by the Tax Commissioner's office with our usual 30% discount.

Q. But the sheets provided by the Tax Commissioner's office was not a return filed for or on behalf of these associations, was it?

A. It was not a return but it was an assessment, as I interpreted it through your letter of instructions which says, "Dear Sir: I hereby respectfully request and instruct you to use such method as shown by said sheets in assessing the properties of State and National Banks, building and loan associations, Federal savings and loan associations, industrial loan companies, small loan com-

page 179] panies and credit unions. I further request

and instruct you not to deviate from such method by way of discount or in any other way or means which will produce different results or assessments than those obtained by such method as shown by such sheets."

Q. At this point I wil lask you to state whether or not the letter of instructions to which you referred is not addressed to all assessors.

A. I do not know. It says "Dear Assessor:" and is dated June 24, 1941.

Q. In the event you had not had the computation sheet issued by the Tax Commissioner's office and did not have the return which you say you do not have, how could you have determined the assessment?

A. I would have called up the companies and asked them to bring in their returns and balance sheets, which I have done in many instances for other corporations.

RE-DIRECT EXAMINATION

By Mr. Nefflen:

Q. Mr. Wilkinson, you were asked on cross examination about the return for the year 1940 of the St. Albans Building & Loan Association, were you not?

A. Yes, sir.

Q. Will you look at that return and state
page 180] whether that return shows a balance sheet for that association as of December 31, 1939?

A. It does not.

Q. Does it show any balance sheet for the previous year upon which to base the assessment for 1940?

A. No, sir, it does not.

Q. Does that return show the amount of reserves and undivided profits of that association?

A. It does not.

Q. Then without a balance sheet showing such reserves and undivided profits is it not possible that their assessed valuation as shown on the return might be less than the assessment would be by considering the reserves and un-

divided profits and then allowing the 3—% discount?

A. It is possible.

Q. You were also asked upon cross examination whether any discount had been allowed for the assessment of gas and oil wells, and I believe you stated that you had received a valuation from the Tax Commissioner's office to be placed upon gas and oil wells in this county, is that correct?

A. We did for oil wells.

Q. And I believe you stated that that valuation constituted a percentage of its true and actual value.

page 181] Will you explain why you made that statement?

A. For the past several years oil wells in this county have been assessed at $1,500 per barrel of average daily production. This value was maintained when oil was selling at a very low price per barrel. At the present time oil is selling at a greater price per barrel, yet for uniformity we were asked by the Tax Commissioner's office to cut our price to $1,000 per barrel, which we did last year, losing approximately $750,000 in valuation in this county.

Q. That is the year for 1940?

A. That is for the year 1940.

Q. Will that same loss apply by using the instructions of the State Tax Commissioner for the year 1941?

A. Yes, sir.

Q. Mr. Wilkinson, I believe you were asked on cross examination if you had received any instructions about allowing any discount to determine the assessed valuation, and outside of the reference to oil wells, I believe you said "none".

A. No, I did not.

Q. What did you say then?

A. I said gas and oil wells, I believe.

Q. Is it not a fact that upon the computation sheets with respect to the four personal finance com-

page 182] panies that those sheets, as prepared by the Tax Commissioner's office, showed a discount with respect to certain installment notes and loans?

A. They did, in the amount of 15%.

Q. And that was an instruction from that office, was it not?

A. Yes, sir, it was.

The witness was then excused.

HOWARD J. GIBSON, having been duly sworn as a witness by the President of the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. State your name, residence and occupation.

A. Howard J. Gibson, Elk River road, Attorney for the State Tax Commissioner's office.

Q. Of what division of the State Tax Commissioner's office?

A. Supervisor of the Levies and Assessments Division

Q. In you capacity do you advise and instruct the county assessors?

A. I do, yes, sir.

Q. Will you state how you advise the assessors with respect to assessing gas wells as to producing

page 183] companies and what method is used?

A. I do not know that I ever instructed them. In 1938 and 1939 they had a conference with the Tax Commissioner's office and independent producers of oil and gas wells, at which time there was attempted to be worked out a formula by which they would be assessed alike throughout the State. That was in November, 1938, which was the same month I went with the Tax Department. Later an instruction letter containing the substance of that agreement was furnished to all assessors and dictated by the Tax Commissioner.

Q. What was the formula?

A. With respect to gas wells, to take the gross receipts from any well for the preceding year, after deducting the

rents and royalties paid, and multiplying the result by three to obtain the assessed value.

Q. Did you advise the Board of Public Works of the State of West Virginia, or consult with it, in connection with the assessment of utility gas companies or those classified as public utilities?

A. I would hardly say I advised, but I did consult with them and worked up certain information gathered from the utility reports which I submitted to the Board of Public Works.

page 184] Q. After that the Board of Public Works makes the assessment of those utility companies, is that correct?

A. That is right.

Q. How are those assessments distributed among the various counties and magisterial districts? Who does that or gives the advice on it?

A. On each utility there is placed an over-all assessment and that assessment is then broken down into counties by one of the men in that division. Then it is sent down to the Auditor's office, and in the Auditor's office the valuations are broken down into magisterial districts, independent school districts and municipalities.

The witness was then excused.

GARLAND F. WILKINSON was again recalled for further examination and testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. Mr. Wilkinson, does your office receive from the State Auditor the utility assessment for the United Fuel Gas Company as distributed by the State Auditor's office?

A. Yes, sir.

page 185] Q. Have you made any computation as to how much of this utility assessment of the Uni-

ted Fuel Gas Company was allocated to Poca District of this county?

A. Yes, sir, I think it was approximately $1,400,000.

Q. Do you know what the production of gas of the United Fuel Gas Company was for the past year in Poca District in this county?

A. No, sir, I do not. However, I do know the amount of royalties they paid out there.

Q. Can you state the amount of those royalties in Poca District paid by the United Fuel Gas Company?

A. Approximately $355,000.

Q. How much of the royalties certified within Poca District was that based on?

A. The royalties certified are one-eighth of the production.

Q. Then, Mr. Wilkinson, if you multiply the amount you just stated, $355,000, by 8 what gross amount of the gas purchased by the United Fuel Gas Company in Poca District would that amount to?

A. $2,840,000.

Q. If you use the method which is testified here by Mr. Gibson of taking the gross amount of those gas wells and multiplying it by 3 what would the valuation be in Poca District of the United Fuel Gas Company?

page 186] Mr. Gibson: Objection for the simple reason that Mr. Wilkinson has just testified he did not know the gross receipts and production. Until he know that he could not be in position to testify.

A. It would be over $8,000,000.

Q. I believe you testified just before that that you received from the Auditor's office for distribution in Poca District of the taxes imposed upon the United Fuel Gas Company in the amount of $1,395,000, did you not?

A. Yes, sir, about $1,400,000.

Q. Would you say that that $8,000,00 would represent about the true and actual value of the wells of the United Fuel Gas Company in Poca District according to that for-

mula?

A. According to that formula that would represent approximately the valuation, yes, sir.

Q. Assuming that there was received from the Auditor's office the sum of $1,400,000 for distribution in Poca District as receipts from the United Fuel Gas Company, and that its true and actual value is $8,000,00, what percentage of the true and actual value would that $1,400,000 represent?

A. That is an allocated assessment.

Q. I want to ask you, of that allocated assessment in Poca District what percentage it would be of

page 187] $8,000,000, assuming that was the true and actual value under the method given by Mr. Gibson?

A. It would be approximately 18%.

CROSS EXAMINATION

By Mr. Gibson:

Q. Mr. Wilkinson, the $1,400,00, approximately, that you testified about, is that the amount of taxes that were received or is that the valuation?

A. That was the valuation.

Q. For Poca District?

A. Yes, sir.

Q. You do know, do you not, that the Board of Public Works of the State of West Virginia assess all the properties of public utilities and that the Tax Commissioner is not a member of that Board?

A. I believe that is correct, sir.

Q. Do you know anything about how the Board of Public Works of West Virginia assess public utilities?

A. No, sir.

Q. Do you know anything about how they break down their distribution except as I testified awhile ago?

A. No, sir, I do not.

The witness was then excused.

page 188] M. BOIARSKY, who heretofore testified as a witness, was recalled for further examination and testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. Mr. Boiarsky, you testified heretofore you are the Secretary-Treasurer of the Charleston Federal Savings & Loan Association, one of the protestants here?

A. That is right.

Q. In connection with the business of your association can you give any publicity out to the investing public without the approval of the Federal Home Loan Board?

A. You cannot.

Q. Do you give out any such publicity?

A. We do.

Q. And with the aproval of the Federal Home Loan Board?

A. That is right.

Q. Have you made distributions of any such publicity in Charleston and vicinity, Kanawha County?

A. I have.

Q. What is the nature of that publicity?

A. This is the pamphlet prepared by Dr. Hoglen, a former member of the Federal Home Loan bank and approved by the Federal Home Loan Bank Board for

page 189] distribution over the United States through their Federal Savings & Loan Associations.

Q. What is the purpose of that information?

A. To inform the public exactly what a Federal Savings & Loan Association is.

Q. And what its purposes are?

A. And what its purposes are.

Q. Does it state its operation?

A. That is right.

Q. Will you file that pamphlet as part of your testimony.

marked "Boiarsky Exhibit No. 1"?

A. I will.

The pamphlet referred to was then received in evidence and marked "Boiarsky Exhibit No. 1".

BOIARSKY EXHIBIT No. 1, FILED

CROSS EXAMINATION

By Mr. Gibson:

Q. Mr. Boiarsky, do Federal Savings & Loan Associations pay any other taxes in the State of West Virginia except the State ad valorem taxes, and if so, what?

A. They do not pay any other taxes.

The witness was then excused.

THE PROTESTANTS HERE RESTED THEIR CASE

page 190] Thereupon the State Tax Commissioner of West Virginia introduced the following evidence, to-wit:

VICTOR R. KRUEGER, having been duly sworn as a witness by the President of the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Gibson:

Q. By whom are you employed?

A. The State Tax Commissioner's office.

Q. How long have you been so employed?

A. Since September 1, 1939.

Q. Mr. Krueger, what did you do prior to the time you began work for the State Tax Commissioner?

A. Prior to the time I began work for the State Tax Commissioner I had been an appraisal engineer and an engineer accountant, for the C. & O. Railroad, the Baltimore

& Ohio Railroad and the Wheeling & Lake Erie Railroad. I have also been an Auditor of the Virginia Central Railway Company for one year, my duties there being principal accounting officer for the railway and charged with the responsibility of preparing and filing tax returns to the State and also reports to the Interstate Commerce Commission of expenditures of the Railway Company.

Q. Mr. Krueger, did you prepare or assist

page 191] in preparing computation sheets showing the purported true and actual value of the properties of the Charleston Finance Company, Colonial Finance Company, Home Finance Company and Household Finance Corporation?

A. For the year 1940, I did.

Q. I believe that there is shown on those computation sheets for those associations what has been testified to by Mr. Wilkinson as a 15% discount suggested by the Tax Commissioner or his representatives. I will ask you whether or not that is a discount from true and actual values?

A. It is not a discount from the true and actual value, but a discount from the face amount or book value of the receivables which, in my judgment, is the true and actual value of such accounts.

Q. I will ask you whether or not last year you were present at a conference held in the Tax Commissioner's office with some attorneys and a number of representatives of these small loan companies?

A. I was.

Q. I will ask you whether or not the representatives of the small loan companies did not produce and exhibit to us a great number of accounts or notes which they had?

A. They did.

page 192] Q. I will ask you further if it was not developed at that time that the true and actual value would rarely, if ever, be in excess of 85% of those accounts, selected at random and exhibited to us?

A. It was so developed at that meeting.

Q. I believe most of those notes were what is commonly

known as "Signature loans" and made without any security?

A. That is right.

Q. I believe there was a number upon which there had been no principal or interest paid for as much as two or three years, is that correct?

A. That is correct.

Q. I hand you a letter dated June 24, 1941, on the letterhead of the State Tax Commissioner of the State of West Virginia headed "Dear Assessor" and signed by Mr. George P. Alderson, Tax Commissioner, which letter is the same one that has been previously testified to as an instruction issued by the Tax Commissioner, by Mr. Wilkinson, and ask you whether or not that instruction was sent to all the assessors in the State of West Virginia, if you know?

A. Yes, sir, this instruction was sent to all assessors in the State of West Virginia.

Q. Will you file that as part of your evi-
page 193] dence and have it marked for identification "Krueger Exhibit No. 1"?

A. I will.

The letter referred to was then received in evidence and marked "Krueger Exhibit No. 1".

KRUEGER EXHIBIT No. 1, FILED

Q. Mr. Krueger, a short time ago I vouched the record with respect to certain comparisons and information and at that time stated that we would file the computation sheets upon which such comparison was made. I will now hand you the computation sheet for the Charleston Building & Loan Association for the year 1940 and ask you whether or not you prepared or assisted in preparing that sheet?

A. I did.

Mr. Nefflen: I object to the question and move to strike

out the answer. I do not see where the computation sheet for the year 1940 is any part of the record of the assessor's office. It has no materiality or relevant value in assessing the property for the year 1941.

Q. I believe what that sheet purports to show is the true and actual value of the properties of the Charleston Building & Loan Association for the year 1940, is that correct?

A. That is correct.

Q. Will you file that as your Exhibit No. 2?

page 194] A. I will.

Mr. Nefflen: We object to the filing of the sheet referred to.

The sheet was then received in evidence, marked "Krueger Exhibit No. 2."

KRUEGER EXHIBIT No. 2, FILED

Q. I hand you a similar computation sheet for the Capitol Building & Loan Association and ask if you will file that as your Exhibit No. 3?

Mr. Nefflen: Objected to for the reasons last assigned.

A. I will.

The sheet referred to was then received in evidence, marked "Krueger Exhibit No. 3".

KRUEGER EXHIBIT No. 3, FILED

Q. I hand you a similar computation sheet for the Colonial Building & Loan Association and ask if you will file that with your testimony as "Krueger Exhibit No. 4"?

Mr. Nefflen: Objection for the reasons las assigned and objection to the question as well.

A. I will.

The sheet referred to was then received in evidence, marked "Krueger Exhibit No. 4".

KRUEGER EXHIBIT No. 4, FILED

page 195] Q. I hand you a similar computation sheet for the year 1940 for the Empire Savings & Loan Association and ask you if you will file that as part of your evidence, marked "Krueger Exhibit No. 5"?

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The sheet was then received in evidence marked "Krueger Exhibit No. 5".

KRUEGER EXHIBIT No. 5, FILED

Q. I hand you a similar computation sheet for the Kanawha Savings & Loan Association for the year 1940 and ask you if you will file that as part of your testimony as "Krueger Exhibit No. 6"?

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 6".

KRUEGER EXHIBIT No. 6, FILED

Q. I hand you a similar computation sheet for the Liberty Building & Loan Association for the year 1940 and ask you if you will file that as part of your testimony?

page 196] Mr. Nefflen: Objection to the question and objection to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No 7".

KRUEGER EXHIBIT No. 7, FILED

Q. I hand you a similar computation sheet for the Community Savings & Loan Company for the year 1940 and ask you if you will file that as part of your testimony as "Krueger Exhibit No. 8"?

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 8".

KRUEGER EXHIBIT No. 8, FILED

Q. I hand you a similar computation sheet for the Industrial Savings & Loan Company for the year 1940 and ask you if you will file that as part of your testimony as "Krueger Exhibit No. 9"?

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

page 197] A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 9".

KRUEGER EXHIBIT No. 9, FILED

Q. I hand you a similar computation sheet for the Equity Savings & Loan Company for the year 1940 and ask you if you will file that as part of your testimony as "Krueger Exhibit No. 10".

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 10."

KRUEGER EXHIBIT No. 10, FILED

Q. I hand you a similar computation sheet for the Southeastern Savings & Loan Company for the year 1940 and ask you if you will file that as part of your testimony as "Krueger Exhibit No. 11"?

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 11."

page 198] KRUEGER EXHIBIT No. 11, FILED

Q. I hand you a similar computation sheet for the Mutual Savings and Loan Association for the year 1940 and ask you if you will file that as part of your testimony, marked "Krueger Exhibit No. 12"?

Mr. Nefflen: Objection to the question and to the filing

of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 12".

KRUEGER EXHIBIT No. 12, FILED

Q. I hand you a similar computation sheet for the Liberty Savings and Loan Company for the year 1940 and ask you if you will file that as part of your testimony, to be marked "Krueger Exhibit No. 13"?

Mr. Nefflen: Objection to the question and to the filing of the computation sheet for the reasons heretofore assigned.

A. I will.

The computation sheet referred to was then received in evidence and marked "Krueger Exhibit No. 13".

KRUEGER EXHIBIT No. 13, FILED

Q. Mr. Krueger, you have now filed as part of your testimony a number of exhibits which are computations sheets showing the purported true and actual value
page 199] of the properties of certain building and loan associations and Federal savings and loan associations. Those computation sheets are for the year 1940, are they not?

A. They are.

Q. You also filed as part of your testimony computation sheets showing the purported true and actual value of the property of a number of industrial loan and small loan companies. Those sheets are also for the year 1940, are they not?

A. They are.

Mr. Nefflen: I move to strike out all the testimony of this witness with respect to these computation sheets marked "Krueger Exhibits 2 to 13," inclusive, as they relate to the assessment here 1940 and are not a part of the records of the assessor's office upon which there is any basis for the assessed valuation of these companies for the year 1940, and they are immaterial and irrelevant in determining the assessed valuation of the properties of the protesting companies for the year 1940.

Mr. Gibson: In reply to that I might state the exhibits are furnished for the purpose of comparing the assessed value of the properties of these various associations for the year 1940 with what purport to be, and what we contend is, the true and actual value of such properties.

page 200] CROSS EXAMINATION

By Mr. Nefflen:

Q. Mr. Krueger, you testified with regard to Wilkinson Exhibits Nos. 6, 7, 8 and 9, which were, respectively, for the Charleston Finance Company, the Colonial Finance Company, the Home Finance Company and the Household Finance Corporation, that approximately 15% was deducted from the book value of certain notes and loans as reflected on those sheets, is that correct?

A. From the book value that was on their balance sheets, that is right.

A. I take it you mean by "book value" with respect to notes which represented the face value of those notes?

A. Yes, sir.

Q. But with respect to the loans, that book value represented the actual amount of the loans or the indebtedness owing to these companies?

A. The amount of the loans outstanding, as I understand it.

Q. Now, Mr. Krueger, is there anything in the tax laws of West Virginia giving any authority to the Tax Commissioner or anybody else or allowing any discount for the purposes and reasons you stated in your direct testimony, to these companies?

page 201] A. I know of no provision of the law that prevents the discounting of the face value in order to obtain the true and actual value.

Q. You mean that 15% would apply to each of the companies for bad debts on delinquent notes and would apply to each and every company?

A. I do not know as I understand your question. Do you mean that the 15% would be bad debts and bad notes?

Q. As a matter of fact is not that an arbitrary ruling of the Tax Commissioner?

A. No, it is not an arbitrary ruling of the Tax Commissioner. It has been developed from an examination of numerous accounts of several small loan companies.

Q. Then as a matter of fact it is a deduction from the book value as reflected by the books of the companies?

A. As reflected by the books of the companies, in order to arrive at the true and actual value of the notes or accounts or loans.

Q. Or as an equalization factor?

A. No, not as an equalization factor: only in order to secure the true and actual value, but not to reduce it below the true and actual value or to equalize it with some property that is not assessed at the true and actual value.

page 202] Q. Is it not possible for conservative finance companies which handle their accounts carefully to have only a three, four or five per cent loss on their loans?

A. It is possible to have a loss of two or three or more per cent each year.

Q. And it is also possible for some of those that are not so careful to have a 15 or 20% loss?

A. Or more, that is true.

Q. Then under the ruling of the Tax Commissioner

would not those companies that are careful and efficient and have a small loss of, say 5% be receiving the benefit of this figure of 15%?

A. As I see it, no, for the simple reason they might have a loss of 2% a year, and those same accounts would be on their books for a long period of time, and 2% deducted from the book value would not reflect the true and actual value of the loans but a value in excess of the true and actual value of the loans.

Q. That would be true of those of more than 15% and up to 20% or more, would it not?

A. That would be true of the companies that had an experience loss of 2% a year. They could still have loans and accounts on their books, after suffering a 2% loss during the past year, which would not be worth

page 203] the face value at the present time and on which they might experience a loss of 15% or more on an average.

Q. That does not run from year to year, does it?

A. Do you mean losses do not run from year to year, or that the amounts are on the books from year to year at the same amount?

Q. These companies are known as "small loan companies" about which we have just been talking and are classified by the State Banking Examiner as "small loan companies" and they lend not more than $300 per person?

A. That is my understanding, and not necessarily secured.

Q. They have to be repaid within a comparatively short time, do they not?

A. I have seen some of their accounts that go from two to five years without being paid.

Q. It is presumed those loans are made for a short period of time and they are to be paid monthly?

A. They are to be paid monthly but some are made for longer periods at the beginning and they know they will extend for one or two years or longer.

Q. Does not the law make some restriction as to the period of time over which such loans may run?

A. I do not know.

page 204] Q. Is it not true the general average of those loans run from one year to 18 months?

A. I do not know.

Q. You have examined the records with respect to that.

A. I have seen some of the records of the companies that run from two to five years and have not been charged off on the books of the company.

Q. Those are delinquent loans?

A. They are delinquent and the interest in some cases is delinquent.

Q. But it is not these that are paid regularly under the contract under which the loans are made?

A. When I say they are delinquent notes, of course I was not considering the ones that are good.

Q. Do not you give them the benefit of that when you give them the benefit of the 15% discount?

A. That is an average that was determined from an examination of their records, including good notes as well as those that are delinquent.

Q. Is it not a fact that some of these companies by being allowed 15% are getting more than they are entitled to and some are getting less, as to the different companies?

page 205] A. It is possible that some of these companies their notes might be worth a little bit more and some not so much, but that is an average figure.

Q. Referring to your Exhibit No. 1, which is the instruction dated June 24, 1941, which you stated was sent to each county assessor, in the third paragraph thereof are not these property owners specifically named,—state and national banks, building and loan associations, Federal savings and loan associations, industrial loan companies, small loan companies, and credit unions?

A. They are.

Q. Do you know in what classification the property of

companies doing the kind of business there enumerated was placed?

A. Their personal property that we have been discussing would be Class 1 and their real estate in Class 3 or 4.

Q. You have not given any instructions to the various county assessors of this state with respect to other property which is placed in Class 1, have you?

A. I do not personally instruct the assessors. I work with them on their problems and advise them.

Q. As a matter of fact this letter of instructions which you have identified does not require the assessors to assess the property of other owners at the true and

page 206] actual value other than these companies here enumerated in the letter, does it?

A. This letter, as I interpret it, does not request or instruct the assessors to assess other property in common with any suggestion given by the representatives of the Tax Commissioner's office.

Q. You have singled out certain property owners doing certain types of business?

A. They are only the type that you mentioned in your question to me.

Q. They have been the ones singled out by this letter?

A. Those are mentioned in this letter.

Q. They are the only ones named, are they not?

A. They are the only ones named in this letter.

Q. The letter of the Tax Commissioner, in the second paragraph and the last sentence thereof, states that sheets showing the method operation of assessing the properties of these institutions has been left at each assessor's office. Are those sheets the same type and character as you have introduced here as part of your testimony marked, for example, Krueger's Exhibit 13, Liberty Savings & Loan Company?

A. That is a sheet that is applicable to industrial loan companies, state and national banks. There is a different sheet or schedule applicable to building and

page 207] loans and another sheet for small loan corporations.

Q. Mr. Kruger, on these forms which you have sent out there is no provision or place for any discount for any purpose, is there? A. Which forms do you mean?

Q. The one to which I just referred and which is referred to in your Exhibit No. 1, the letter of the State Tax Commissioner?

A. Exhibit No. 1 was sent out, and the other sheets or schedules applicable to the different classes of financial institutions were left with them. They did not accompany this letter, Exhibit No. 1.

Mr. Nefflen: I move to strike the answer as not being responsive to the question.

The last question was then read to the witness.

A. There is no discount used on any of the sheets. However, in arriving at the true and actual value of small loan companies 85% of the face value was used.

Q. But these discounts were allowed in respect to these personal finance companies you have testified about?

A. In respect to small loan companies no discounts were allowed from the true and actual value.

Q. What discount was allowed?

page 208] A. The true and actual value as shown on those sheets was obtained by valuing the notes at 85 cents on the dollar or, as you term it, discounting the face value 15%.

Q. Is not that contrary to the letter of the Tax Commissioner dated June 24, 1941, which you filed as Exhibit No. 1, as shown by the last sentence of the third paragraph which reads as follows: "I further request and instruct you not to deviate from such method by way of discounts or in any other way or means which will produce different results or assessments than those obtained by such methods as shown by such sheets, as this method is in compliance with constitutional and statutory provisions of the law and assessments made in accordance therewith will likewise be made as directed by law"?

A. No, sir.

The witness was then excused.

J. L. VAN VERTH, having been first duly sworn as a witness by the President of the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Gibson:

Q. What is your name?

A. J. L. Van Verth.

page 209] Q. By whom are you employed at the present time?

A. The State Tax Commissioner's office.

Q. Do you know of your own personal knowledge whether or not the entire assets except the cash of any small loan company operating in the state have been bought or sold within the past year?

A. Sometime during 1940, the latter part, I think, the Equity Savings & Loan Company was purchased or, rather, the Equity Savings & Loan Company sold to the Personal Finance Company its accounts and notes.

Q. Do you know what the Personal Finance Company paid the Equity Savings & Loan Company for those accounts and notes?

A. It paid it 87% of the face of the notes.

Q. Where did the Equity Savings & Loan Company do business, that is, in what county, prior to the time it sold its assets?

A. In Kanawha County.

Q. Mr. Van Verth, I will ask you to state whether you took a little time to investigate the sales of some property in Kanawha County and made a comparison of the sales price with the assessed value placed upon such properties by the assessor of Kanawha County?

A. I did.

page 210] Q. I hand you a sheet which purports to be

the sale of Lot 42, Block B, Dunbar Avenue, in the City of Dunbar, Union District, Kanawha County, the date of the deed being July 13, 1936, and ask you what the consideration or sales price was on that property?

Mr. Nefflen: Objection as to any sale in 1936.

A. The recited consideration was $650.

Q. What is the assessed value for the year 1940?

A. $600.

Mr. Nefflen: Motion to strike out the answer as being irrelevant and immaterial.

Q. The assessment is what per cent of the purchase price?

A. 92%.

Q. Will you file that as part of your testimony to be marked "Van Verth Exhibit No. 1"?

A. I will.

Mr. Nefflen: Objected to on the ground that is is immaterial and does not show all of the surrounding circumstances and other information which the assessor may have taken into consideration in arriving at the assessed valuation of the property.

A. I will.

The sheet referred to was then received in
page 211] evidence and marked "Van Verth Exhibit No. 1".

VAN VERTH EXHIBIT No. 1, FILED

Q. I hand you a similar sheet showing the sale of certain acreage in Poca District of Kanawha County, the date of the sale being July 7, 1933, and ask you what consideration is recited for that property?

A. $1200 and the assumption of 193 -1933 taxes.

Q. What was the assessed value of that property in

1940?

A. $1550.

Q. What percentage is the assessment of the purchase or sale price?

A. 129%.

Q. Will you file that as part of your testimony and have it marked "Van Verth Exhibit No. 2"?

A. I will.

Mr. Nefflen: Objection to its being filed for the reason assigned to the introduction of Van Verth Exhibit No. 1.

The sheet referred to was then received in evidence and marked "Van Verth Exhibit No. 2".

VAN VERTH EXHIBIT No. 2, FILED

Q. I hand you a similar sheet showing the sale of a lot on Kanawha Street, the date of the deed being January 1, 1941, and ask you what the sales price or con-

page 212] sideration was for that property?

A. $23,750.

Q. What was the assessment on that property for the year 1940?

A. $33,000.

Q. What percentage is the assessment of the purchase or sales price?

A. 139%.

Q. Will you file that as part of your testimony and have it marked "Van Verth Exhibit No. 3"?

A. I will.

Mr. Nefflen: Objection to the filing for the same reasons as assigned to the introduction of Van Verth Exhibit No. 1.

The sheet referred to was then received in evidence and marked "Van Verth Exhibit No. 3".

VAN VERTH EXHIBIT No. 3, FILED

Q. I hand you a similar sheet showing the sale of certain real estate on Virginia Street in the City of Charleston and ask you what the consideration was there?

A. $23,000.

Q. What was the assessed value of that property for the year 1940?

A. $24,500.

Q. What percentage is the assessment of the
page 213] selling price or consideration paid?

A. 106%.

Q. What was the date of that deed?

A. March 6, 1941.

Q. Will you file that as part of your testimony to be marked "Van Verth Exhibit No. 4"?

A. I will.

Mr. Nefflen: The filing of the paper is objected to for the same reasons as assigned to the introduction of Van Verth Exhibit No. 1.

The sheet referred to was then received in evidence and marked "Van Verth Exhibit No. 4".

VAN VERTH EXHIBIT No. 4, FILED

CROSS EXAMINATION

By Mr. Nefflen:

Q. Mr. Van Verth, you have filed as part of your testimony four exhibits marked Van Verth Exhibits 1 to 4, inclusive. You have taken this information shown on these exhibits from the land records of Kanawha County?

A. From the land records and from the deed books.

Q. When did you make this examination of the land records of Kanawha County?

A. In the early part of this week, I believe.

page 214] Q. How long were you down there?

A. I was there the better part of a day, I would say.

Q. You picked out just these four transactions?

A. I took them as the records showed them.

Q. How many pieces of property did you examine?

A. Some of them I could not get information on that I could testify to.

Q. You mean you could not get information whereby it showed the assessed value was less than the consideration?

A. I could not get the consideration price.

Q. Did you look at the revenue stamps?

A. I did but I did not depend on revenue stamps altogether. I was trying to get verification of sales.

Q. What else did you depend on?

A. I verified them with the previous owner or the purchaser, one or the other.

Mr. Nefflen: I move to strike out all your testimony on the ground that other evidence is the best evidence and that this is secondary and hearsay.

Mr. Gibson: In reply to which we will say that is only one of the things he verified, the consideration paid, and he further verified it by the revenue stamps.

Commissioner Calvert: On what ground do page 215] you move to strike out the evidence?

Mr. Nefflen: On the ground that he interviewed property owners and that he should produce that evidence instead of giving it by this witness.

Mr. Gibson: I want to call attention to the fact that that is only one of the ways he verified the consideration, the other being by revenue stamps, which frequently is the only method used, and which method was testified to by the assessor as grounds for assessing valuation.

Mr. Nefflen: The assessor is authorized to secure other means of consideration. You might withhold your ruling and let me go ahead with the cross examination.

Q. Mr. Van Verth, take your Exhibit No. 1 which shows

a transfer from Floyd A. Ramsey to Adda B. Hall by deed dated July 13, 1936. Did you see what the assessed valuation of that property was prior to 1937, which is the first year you show it on this sheet?

A. I did not have the time to check it.

Q. You do not know if that property was not valued at much less than $600 previous to this transfer in 1936?

A. I do not know.

Q. You do not know whether there were any improvements on it since the last time the assessor put

page 216] a valuation on that property?

A. I do not know.

Q. With respect to your Exhibit No. 2, which shows the transfer of property of O. E. Bailey and Clyde D. Bailey to V. C. Tate dated July 7, 1933, and the consideration of $1,200 and the assumption of the 1932-1933 taxes. That shows that the assessment for 1934 was the same as 1940, the sum of $1500, does it not?

A. Well, no; $1500 in 1934 and $1550 in 1940.

Q. Did you examine the assessment records of Poca District of this county to determine what the valuation was upon that property previous to the year 1934?

A. I did not.

Q. You do not know whether any improvements have been made upon that property from the time it had been previously assessed by the assessor?

A. I cannot recall in all these cases but in some cases there were improvements already assessed. I used the total assessed valuation in all cases.

Q. You do not know if there were any additional improvements?

A. No.

Q. And you do not know how long the Bail-

page 217] eys had owned that property previous to selling it in July, 1933?

A. No, I do not.

Q. You did not examine the record as to that?

A. No.

Q. Regarding your Exhibit No. 3, you stated that was sold by William G. Caperton and others to Modern Homes by deed dated January 1, 1941, and that the consideration was $23,750 and that it was assessed in 1940 at $33,000?

A. That is right.

Q. And that the 1940 assessment is 139% of the purchase price?

A. That is right.

Q. Is it not a fact that for the year 1939, a year previous to the 1940 assessment, it was also assessed at $33,000?

A. I think it is.

Q. That was previous to its sale by William G. Caperton?

A. That is right.

Q. Do you know what other information the assessor may have taken into consideration in determining the valuation for 1940 so it remained the same as for 1939 in spite of the sale price being less?

A. The valuations of 1940 was placed prior to that sale, I believe.

page 218] Q. (By President Brotherton) Mr. Van Verth, did you ascertain this information from the buyer or seller, or did you take it from the records?

A. I took the information from the records and verified it later from either the buyer or seller or the attorney in the case.

Q. (By Commissioner Cavender) Does the record the actual sales price?

A. In some it does and in some it does not.

Q. (By Commissioner Calvert) How did you arrive at the value of if it did not show it?

A. I verified the sale price by either the seller or the purchaser.

Q. (By Mr. Nefflen) This Exhibit No. 3 shows the deed from Caperton to Modern Homes was on January 1 of this year?

A. That is right.

Q. You do not know what the assessor might do as to possibiy reducing that assessment for 1941 in view of the sale price?

A. No, I do not.

Q. I note that the grantee is Modern Homes. If that concern should transform that property into rented property it is possible the assessor might increase

[page 219] it above its former assessed value for the present year?

A. I do not know.

Q. Regarding your Exhibit No. 4, that shows the transfer by Sallie, L. D. and C. R. Chase to Isabelle Levi of property located in Block A of Ruffner Brothers Addition?

A. That is right.

Q. That deed was dated March 6, 1941?

A. That is right.

Q. And there were revenue stamps thereon of $26?

A. $26.40.

Q. Can you get revenue stamps in 40 cents?

A. There are 2 20's on there.

Q. And the consideration in that deed was $23,000?

A. That was the information I had.

Q. That is information, is that shown on the deed?

A. No, it is not.

Q. The assessment you refer to of $24,500 was for the year 1940, is that correct?

A. Yes, sir.

Q. Do you know how long the Chases owned that property before they sold it in March of this year?

A. I do not.

Q. You do not know the condition of the property.

A. I do not.

[page 220] Q. Do you know what assessment has been made on that property for the year 1941?

A. I do not.

Q. Have you made an inspection of any of these properties about which you have testified?

A. I never made any inspection, no.

Q. And you do not know how many deeds you examined down in the County Clerk's office?

A. I do not recall.

Q. But these were the only four you were able to pick out of all those you examined?

A. Those were the only four I was able to get additional verification of besides the revenue stamps.

Q. A good many times it recited "$10 and other valuable considerations", is that right?

A. That is right.

Q. In what classification for taxation purposes was the property represented by these four exhibits in?

A. I could not tell you definitely on each property.

Q. Was it all real estate?

A. It was all real estate.

Q. They would either be in Class 2 or Class 4?

A. Some might be in Class 3 because I be-

page 221] lieve two of them are rural properties.

Q. None of them are Class 1 properties?

A. No.

RE-DIRECT EXAMINATION

By Mr. Gibson:

Q. There has been some testimony here about what is commonly known as the balance sheet or S.T.C.O. Form 3-c, a copy of which is filed with the testimony of Mr. Wilkinson as Wilkinson Exhibit No. 10. I hand you here S.T.C.O. Form 3-c revised September, 1940, and ask you if you will file that as part of your testimony marked "Van Verth Exhibit No. 5"?

A. I will.

The form referred to was then received in evidence, marked "Van Verth Exhibit No. 5".

VAN VERTH EXHIBIT No. 5—FILED

President Brotherton: Mr. Nefflen, the Court overrules your motion to strike out a previous question.

(Exception)

The witness was then excused.

GARLAND F. WILKINSON, was then again recalled as a witness, and testified as follows:

page 222] DIRECT EXAMINATION

By Mr. Nefflen:

Q. I hand you four exhibits which have been filed by Mr. Van Verth as part of his testimony and ask you to examine them. With respect to Exhibit No. 1, state, if you know, whether that valuation of $600, despite the purchase price, is out of line considering the neighborhood that property is in.

A. I could not say unless I saw the property and examined the land books in order to see how much of this valuation is represented by the land value and how much is represented by improvements.

Q. Likewise I call your attention to Van Verth Exhibit No. 2, which relates to the Tate property, and ask you if you know anything about the property or where that property is located?

A. It is located in Poca District.

Q. Do you know anything about the valuation of the property in that district?

A. Yes, sir.

Q. Do you know anything about this particular property?

A. I do not with regard to this particular property. However, it is in the vicinity of the oil and gas

page 223] developments at the present time. I would not be prepared to tell you what I think the property should be assessed at without examining the records and the property.

Q. I show you Van Verth Exhibit No. 3 which shows the 1939 and 1940 assessments were $33,000, and that by deed dated January 1, 1941, it was sold by William G. Capperton and others to Modern Homes for a sales price of $23,750. Has that property been assessed this year to your knowledge or would that consideration enter into consideration in assessing it?

A. It has not and will not be assessed until 1942.

Q. For what reason?

A. Because the deed was filed after January 1, 1941.

Q. And the transfer slip would not come through?

A. That is correct. At that time one of our deputy assessors will inspect the property and if there have been no alterations or improvements on the property in all probability an adjustment will be made.

Q. Depending upon what use the owners of the property would put it to?

A. That is right.

Q. I hand you Van Verth Exhibit No. 4 which shows a sale price of about $23,000 as of March 6 of this year and an assessed valuation for 1940 of $24,000, and ask you when that property will be placed on the assessment records in the name of Isabelle Levi?

[page 224]

A. In 1942.

Q. When will you receive the transfer from the County Clerk's office during this year?

A. The transfer will be made on our 1941 blotters.

Q. Can you approximate or estimate how many transfers of real estate there are in Kanawha County during a calendar year?

A. We have estimated that we have made on our land books in the neighborhood of between 14,000 and 15,000 transfers.

Q. I believe you testified earlier, either today or yesterday, that in some instances, depending on location, a property may sell at $100 a front foot and you would assess

it at $100 a front foot?

A. That is correct.

Q. I wish you would state over what period of time the four exhibits filed by Mr. Van Verth run or when the transfers were made, over what period of years?

A. Between 1933 and 1941.

Q. A period of about eight years?

A. Yes, sir.

Q. Under your estimate then of what the average transfers are there would be in that period probab-

page 225] ly 100,000 transfers of real property in this county, would there not be?

A. Probably not that many during the past eight years. I would say, very conservatively, we have made 60,000 transfers.

The witness was then excused.

DELBERT T. ROBINSON, having been first duly sworn as a witness by the President of the Court, and introduced on behalf of the protestants, testified as follows:

DIRECT EXAMINATION

By Mr. Nefflen:

Q. Your name is Delbert T. Robinson?

A. Yes, sir.

Q. What is your position with the Empire Savings & Loan Association?

A. Secretary-Treasurer.

Q. Have you made a return for assessment purposes of the Empire Savings & Loan Association property for 1941?

A. I did.

Q. Was that return accepted by the assessor?

A. It was handed to him.

Q. Do you desire to file as part of your testimony that return showing what you contend to be the correct assessed valuation for that company?

page 226] A. Yes, sir, it is his copy that I have.

Q. The assessor's copy?

A. Yes.

Q. Will you file that as a copy of your return?

A Yes, sir.

Q. What does that return show as to the amount you claim to be the proper amount for assessing the valuation of the Empire Savings & Loan Association for 1931?

A. $170,735.85.

Q. And you base your claim on the same testimony which has been heretofore offered by the other three protestants, the Charleston Federal Savings & Loan Association and the other two?

A. The same.

CROSS EXAMINATION

By Mr. Gibson:

Q. The amount which you returned for assessment taxation purposes is the amount you get after deducting 30% from the actual value of your capital, is that correct?

A. Not the actual value; from the book figures.

Q. Is the return which you have filed here the same one you filed with the assessor of Kanawha County?

page 227] A. That is the one I filed with him. I did not put my name on the back of it.

Q. When did you file it with the assessor of Kanawha County?

A. Yesterday.

Q. On July 17, 1941?

A. Sometime ago after this controversy arose I filed Mr. Van Verth's figures and a copy of my report to the Federal Home Loan Bank and left it with the assessor owing to the difficulty we were having in arriving at the proper way of assessment. I did not agree with either the Tax Commissioner or the assessor and I left it with them to work out.

The witness was then excused.

And this was all the testimony taken in this case.

page 228] State of West Virginia,
County of Kanawha, to-wit:

I, Reuel E. Sherwood, Shorthand Reporter, do hereby certify that the foregoing is a true and correct transcript of the evidence offered or introduced and of the proceedings had at the hearing stated in the caption hereof, as reported by me in shorthand; and that before proceeding to report said hearing I was duly sworn by the President of the Court to correctly take in stenographic characters and to accurately transcribe into the English language the proceedings of such hearing.

Given under my hand this 18th day of July, 1941.

S REUEL E. SHERWOOD,
Shorthand Reporter.

Cost of Transcript:

Reporting time,	$2\frac{1}{2}$ days @	$15.00	$ 37.50
Transcript,	207 pp. @	.50	103.50
Transcript (Cbn.)	207 pp. @	.15	31.05
Total			$172.05

I certify the above taxation to be correct.

S REUEL E. SHERWOOD,
Shorthand Reporter.

A True Carbon Copy:
REUEL E. SHERWOOD,
Shorthand Reporter.

page 229] EXHIBIT WILKINSON No. 1

Charleston Federal Savings & Loan Association
804 Kanawha Boulevard, East

Schedule D. Computation of value for assessment and taxation purposes, assessment year beginning January 1, 194 .

Item (a)	Shares Par Value (b)	Number (c)	Amount (d)	Amount (e)
Capital Stock or Shares (repurchasable, free or investment shares or accounts:)				
1 Investment & Savings Shares	$100.		$878,148.67	
2				
3				
4				
5				
6				
7 Total privately owned shares (sum of items 1 to 6)				$878,148.67
8 U. S. Treasury investment				
9 H.O.L.C. investment			375,000.00	
10 Total Government owned shares				375,000.00
11 Total Free Shares (sum of items 7 and 10)				$1,253,148.67
Other Capital:				
12 Surplus				
13 Undivided profits			27,011.68	

14 Current income		
15 Earned reserves (itemized, exclusive of actual expense reserves)		
16 Reserve for Uncollected Interest	1,280.29	
17 Deferred Income (Loan Premiums)	32,268.09	
18 Contingent Fund	12,500.00	
19 Insurance Reserve	7,000.00	
20		
21		
22		
23 Total (sum of items 12 to 22 inclusive)		80,060.07
24 Total capital (sum of items 11 and 23)		$1,333,208.74
Deductions:		
25 Current operating expense		
26 Assessed value of real estate as fixed by the Assessor	17,600.00	
27 Other deductible liabilities (if properly deductible)		
28 Total Deductions (sum of items 25, 26 and 27)		17,600.00
Net Capital:		
29 Net capital (item 24 less item 28)		$1,315,608.74
Net Value per Dollar of Invested Capital:		
30 Net value per dollar of invested capital (item 29 divided by item 11)		$1.049
Assessed value of privately owned shares		
31 Assessed value of privately owned shares (item 7 times item 30)		$921,180.00

Revised Computation
Date June 24, 1941 J. L. Van Verth

page 230] EXHIBIT WIKSINSON No. 2

Copy of Return Copied by J. L. Van Verth, supervisor

S. T. C. O. Form 4A
For Use of
Building and Loan and Federal Savings and Loan Associations
State of West Virginia

Annual Tax Return of Charleston Federal Savings & Loan Association of Charleston, in Charleston East (Urban) District, Kanawha County, for the assessment year beginning January 1, 194 .

To J. H. Abbott Assessor of Kanawha County.

Schedule A. Real Estate Owned. (List all property owned whether located within or outside of this State. First, list the taxing district in which the property is situated and then under such taxing district list all the property owned in that district. Fill in all columns including the Assessed Value.)

Description as shown on Land Books or Tax Duplicate	Value Buildings on Lot	Lot	Lot and Buildings Assessed
Within Municipalities:			
Charleston—East			
804 Kanawha Street			
Lot 19 x 100 and Building			17,500.
Book Value			
Outside Municipalities:			

page 231] Schedule B. Balance Sheet as of the Close of Business of the year immediately preceding the tax year:

Assets	1940 December 31,
First Mortgage Real Estate Loans	$1,282,043.33

Stock in Federal Home Loan Bank	12,000.00
Home Office Building	17,500.00
Cash on Hand and in Banks	52,195.49
Total	$1,363,738.82
Liabilities	
Investment and Savings Share Accounts—Federal	$ 375,000.00
Investment and Savings Share Accounts—Other	878,148.67
Loans in Process	5,199.61
Appraisal and Attorney Fees—Deposit	299.45
Reserve for Uncollected Interest	1,280.29
Deferred Income	32,268.09
Undivided Profits	27,011.69
Contingent Fund	12,500.00
Insurance Reserve	7,000.00
Advances Federal Home Loan Bank	25,000.00
Reserve for Interest—Same	31.02
Total	$1,363,738.82

page 232] Schedule C. Supplemental Information.

1. Balance remaining unpaid on real estate sold on contract
2. Balance paid on real estate sold on contract
3. Original cost of real estate sold on contract including cost of improvements thereon
4. Rate of dividends paid on shares for five year period immediately preceding the assessment year:
   19 , 19 , 19 , 19 , 19
5. Losses charged off during five year period immediately preceding assessment year:
   19 , 19 , 19 , 19 , 19
6. Other data affecting the value of the capital as evidenced by the shares and the earned reserves:

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year Beginning January 1, 194 .

Item	Par Value	Shares Number	Shares Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:*				
Repurchasable, Free or Investment Shares or Accounts:				
1. Investment Share Accounts			482,300.00	
2. Savings Share Accounts			396,848.67	
3.				
4.				
5.				
6.				
7. *Total privately owned shares (Sum of items 1 to 6)				878,148.67
8. U. S. Treasury investment				
9. H. O. L. C. investment			375,000.00	
10. Total Government owned shares				
11. *Total Free Shares (sum of items 7 and 10)				1,253,148.67
Other Capital:				
12. Surplus				
13. Undivided profits				
14. Current income				
15. Earned reserves (itemize, exclusive of actual expense reserves).				
16.				
17.				
18.				
19.				
20.				

21.		
22.		
23. Total (sum of items 12 to 22 inclusive)		
24. Total capital (sum of items 11 and 23)		
Deductions:		
25. Current operating expense		
26. Assessed value of real estate as fixed by the assessor	17,600.00	
27. Other deductible liabilities (if properly deductible) HOLC Investment	375,000.00	
28. Total Deductions (Sum of items 25, 26 and 27)		392,600.00
Net Capital:		
29. Net capital (item 24 less item 28)		860,548.67
Net Value per Dollar of Invested Capital:		
30. Less 30% *		256,164.60
Assessed Value of Privately Owned Shares:		
31. Assessed value of privately owned shares (item 7 times item 30)		602,384.00

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

*To equalize value with assessed values of other properties.

page 233] S.T.C.O. Form No. 4A—Tax Return

Annual Return of the Taxable Property
of the
Charleston Federal Savings & Loan Association
Engaged in Business in

_____ District
_____ Municipality

The address of the Corporation making this return:
804 Kanawha Blvd.

Received and Filed

Date _____

Assessor.

Total Amount Returned for Taxation	
B of E. & R.	
Class No. 1 (639,030)	$ 921,180
Class No. 3 or 4	$ _____
Total All Classes	$ _____

Page _____ Line _____ Personal Property Book

Oath

State of West Virginia,
County of Kanawha, ss:

I, M. Boiarsky Secretary-Treasurer
(Name of Officer) (Official Title)
of the Charleston Federal Savings and Loan Association Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price

which might be realized at a forced or auction sale; so help me God.

(Signed) M. BOIARSKY.

Subscribed and sworn to before me by ....., this the ..... day of ..... 19 .....

.....

.....

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may

be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which

any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 234] WILKINSON EXHIBIT 3

First Federal Savings & Loan Association
Capital City Bldg., Charleston

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year Beginning January 1, 194.....

Item	Shares Par Value	Shares Number	Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:*				
Repurchasable, Free or Investment Shares or Accounts:				
1.				
2. Due Shareholders	100		229,566.43	
3.				
4.				
5.				
6.				
7. *Total privately owned shares (Sum of items 1 to 6)				229,566.43

8.	U. S. Treasury investment	45,000.00	
9.	H. O. L. C. investment		
10.	Total Government owned shares		45,000.00
11.	*Total Free Shares (sum of items 7 and 10)		274,566.43
	Other Capital:		
12.	Surplus		
13.	Undivided profits	13,380.18	
14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves):		
16.	Income collected in advance	11,001.31	
17.	Uncollected Interest	209.54	
18.	Reserve for Federal Insurance	5,323.89	
19.	Reserve for Contingencies	9,712.71	
20.			
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive)		39,627.63
24.	Total capital (sum of items 11 and 23)		314,194.06
	Deductions:		
25.	Current operating expense		
26.	Assessed value of real estate as fixed by the assessor	16,150.00	
27.	Other deductible liabilities (if properly deductible)		
28.	Total Deductions (Sum of items 25, 26 and 27)		16,150.00

Net Capital:	
29. Net capital (item 24 less item 28)	298,044.06
Net Value per Dollar of Invested Capital:	
30. Net value per dollar of invested capital (item 29 divided by item 11)	1.085
Assessed Value of Privately Owned Shares:	
31. Assessed Value of privately owned shares (item 7 times item 30)	249,080.00

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

Date 5-19-41 JLV
Paul Edmunds, Secy
G. F. Wilkinson, Dep. Assessor

page 235] Oath

State of West Virginia,
County of ..... ss:

I, ...
(Name of Officer) (Official Title)
of the .....
Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are us-

ually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

.....

Subscribed and sworn to before me by ....., this the ..... day of ..... 19 .....

.....

.....

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may

be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such

association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 236] WILKINSON EXHIBIT No. 4

S. T. C. O. Form 4A

For Use of
Building and Loan and Federal Savings and Loan Associations

State of West Virginia

Annual Tax Return of First Federal Savings & Loan Association of Charleston in _____ District _____ County, for the assessment year beginning January 1, 194 .
To _____ Assessor of _____ County.

Schedule A. Real Estate Owned. (List all property owned whether located within or outside of this State. First, list the taxing district in which the property is situated and then under such taxing district list all the property owned in that district. Fill in all columns including the Assessed Value.)

Description as shown on Land Books or Tax Duplicate	Value			
	Buildings on Lot	Lot	Lot and Buildings	Assessed
Within Municipalities:				
Outside Municipalities:				

page 237] Schedule B. Balance Sheet as of the Close of Business of the Year Immediately Preceding the Tax year:

	Amount	Total
1. First mortgage loans:		
a. Direct reduction loans		
b. Share account sinking fund loans		
c. Straight loans		
d. Accrued interest receivable (if separate)		
e. Advances for taxes, insurance, etc.		
f. Other loans		
Total first mortgages		
2. Second mortgage loans		
3. Loans secured by shares		
4. Real estate:		
a. Sold on contract		
b. Owned		
c. In judgment and subject to redemption		
Total real estate		
5. Investment securities:		
a. Stock in F. H. L. Bank		
b. F. H. L. B. Bonds		
c. U. S. Government obligations (including H. O. L. C. Bonds)		
d. Other investment securities		
Total investment securities		
6. Accrued interest on investments		
7. Cash on hand and in banks		
8. Office building:		
a. Original cost		
b. Accrued depreciation		
Original cost less depreciation (8a less 8b)		

9. Furniture, fixtures and equipment:
   a. Original cost
   b. Accrued depreciation

   Original cost less depreciation (9a less 9b)
10. Deferred charges:
   a. Prepaid bond and insurance premiums
   b. Organization expense
   c. Other

   Total
11. Other assets:
   a.
   b.

   Total
12. Current operating expense

   Total Assets
13. Repurchasable or free shares:
   a. Total private shares
   b. U. S. Treasury investment
   c. H. O. L. C. investment

   Total
14. Mortgaged pledged shares
15. Advances from F. H. L. Bank
16. Other liabilities for borrowed money
17. Interest:
   a. On advances from F. H. L. Bank
   b. On other liabilities for borrowed money
18. Dividends declared but unpaid
19. Taxes accrued on real estate owned.
20. Accounts payable
21. Loans in process
22. Advance payments by borrowers for taxes, insurance, etc.

23. Other liabilities:
    a.
    b.

    Total
24. Deferred credit to future operations:
    a. Unearned profit on real estate sold
    b. Income collected in advance

    Total
25. Specific reserves:
    a. Uncollected interest
    b. Junior liens
    c. Furniture and fixtures

    Total
26. General reserves:
    a. Taxes
    b. Federal insurance
    c. Real estate
    d. Other

    Total
27. Bonus on shares.
28. Undivided profits
29. Current income

    Total Liabilities

page 238] Schedule C. Supplemental Information.

1. Balance remaining unpaid on real estate sold on contract
2. Balance paid on real estate sold on contract
3. Original cost of real estate sold on contract including cost of improvements thereon
4. Rate of dividends paid on shares for five year period immediately preceding the assessment year:
   19____, 19____, 19____, 19____, 19____

5. Losses charged off during five year period immediately preceding assessment year:
   19..... , 19..... , 19..... , 19..... , 19.....
6. Other data affecting the value of the capital as evidenced by the shares and the earned reserves:

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year Beginning January 1, 194.....

Item	Shares Par Value	Number	Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:*				
Repurchasable, Free or Investment Shares or Accounts:				
1.				
2. Due Shareholders $100			229,566.43	
3.				
4.				
5.				
6.				
7. *Total privately owned shares (Sum of items 1 to 6)				229,566.43
8. U. S. Treasury investment			45,000.00	
9. H. O. L. C. investment				
10. Total Government owned shares				45,000.00
11. *Total Free Shares (sum of items 7 and 10)				274,566.43
Other Capital:				
12. Surplus				
13. Undivided profits			13,380.18	
14. Current income				

15.	Earned reserves (itemize, exclusive of actual expense reserves).		
16.	Income collected in advance	11,001.31	
17.	Uncollected Interest	209.54	
18.	Reserve for Federal Insurance	5,323.89	
19.	Reserve for Contingencies	9,712.71	
20.	.....		
21.	.....		
22.	.....		
23.	Total (sum of items 12 to 22 inclusive)		39,627.63
24.	Total capital (sum of items 11 and 23)		314,194.06
	Deductions:		
25.	Current operating expense.....		
26.	Assessed value of real estate as fixed by the assessor	16,150.00	
27.	Other deductible liabilities (if properly deductible)		
28.	Total Deductions (Sum of items 25, 26 and 27)		16,150.00
	Net Capital:		
29.	Net capital (item 24 less item 28)		298,044.06
	Net Value per Dollar of Invested Capital:		
30.	Net value per dollar of invested capital (item 29 divided by item 11)		1.085
	Assessed Value of Privately Owned Shares:		
31.	Assessed value of privately owned shares (item 7 times item 30)		*249,080.00

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or pur-

chased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

The above figures are book value, and not actual value. Deducting 30%, gives actual value for assessment purposes, $174,356.00.

Association figures.

*Tax Com.

page 239] S. T. C. O. Form No. 4A—Tax Return

Annual Return of the Taxable Property
of the

.....

Engaged in Business in

..... District
..... Municipality

The address of the Corporation making this return:

.....

.....

Received and Filed

Date .....

.....

Assessor.

Total Amount Returned for Taxation

Class No. 1	$.....
Class No. 3 or 4	$.....
Total All Classes	$.....

Page ..... Line ..... Personal Property Book

Oath

State of West Virginia,
County of Kanawha, ss:

I, ...

(Name of Officer) (Official Title)

of the .....

Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

.....

Subscribed and sworn to before me by .....
this the ..... day of ..... 19 .....

.....

.....

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Ses-

sion 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as afore-

said, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 240] WILKINSON EXHIBIT No. 4

Copy of Return Copied by J. L. Van Verth, supervisor

S. T. C. O. Form 4A
For Use of
Building and Loan and Federal Savings and Loan Associations
State of West Virginia

Annual Tax Return of First Federal Savings & Loan Association of Charleston in .....
District, Kanawha County, for the assessment year begin-

ning January 1, 1941.

To ..... Assessor of ..... County.

Schedule A. Real Estate Owned. (List all property owned whether located within or outside of this State. First, list the taxing district in which the property is situated and then under such taxing district list all the property owned in that district. Fill in all columns including the Assessed Value.)

Description as shown on Land Books or Tax Duplicate	Value Buildings on Lot	Lot	Lot and Buildings Assessed
Within Municipalities:			
Outside Municipalities:			

page 241] Schedule B. Balance Sheet as of the Close of Business of the Year Immediately Preceding the Tax year:

	Amount	Total
1. First mortgage loans:		
a. Direct reduction loans		
b. Share account sinking fund loans		
c. Straight loans		
d. Accrued interest receivable (if separate)		
e. Advances for taxes, insurance, etc.		
f. Other loans		
Total first mortgages		
2. Second mortgage loans		
3. Loans secured by shares		
4. Real estate:		
a. Sold on contract		
b. Owned		
c. In judgment and subject to redemption		
Total real estate		

5. Investment securities:
   a. Stock in F. H. L. Bank
   b. F. H. L. B. Bonds
   c. U. S. Government obligations (including H. O. L. C. Bonds)
   d. Other investment securities

   Total investment securities
6. Accrued interest on investments
7. Cash on hand and in banks
8. Office building:
   a. Original cost
   b. Accrued depreciation

   Original cost less depreciation (8a less 8b)
9. Furniture, fixtures and equipment:
   a. Original cost
   b. Accrued depreciation

   Original cost less depreciation (9a less 9b)
10. Deferred charges:
    a. Prepaid bond and insurance premiums
    b. Organization expense
    c. Other

    Total
11. Other assets;
    a.
    b.

    Total
12. Current operating expense

    Total Assets
13. Repurchasable or free shares:
    a. Total private shares
    b. U. S. Treasury investment

c. H. O. L. C. investment

Total

14. Mortgaged pledged shares
15. Advances from F. H. L. Bank
16. Other liabilities for borrowed money
17. Interest:
    a. On advances from F. H. L. Bank
    b. On other liabilities for borrowed money
18. Dividends declared but unpaid
19. Taxes accrued on real estate owned.
20. Accounts payable
21. Loans in process
22. Advance payments by borrowers for taxes, insurance, etc.
23. Other liabilities:
    a.
    b.

Total

24. Deferred credit to future operations:
    a. Unearned profit on real estate sold
    b. Income collected in advance

Total

25. Specific reserves:
    a. Uncollected interest
    b. Junior liens
    c. Furniture and fixtures

Total

26. General reserves:
    a. Taxes
    b. Federal insurance
    c. Real estate
    d. Other

Total

27. Bonus on shares.
28. Undivided profits
29. Current income

Total Liabilities

page 242] Schedule C. Supplemental Information.

1. Balance remaining unpaid on real estate sold on contract
2. Balance paid on real estate sold on contract
3. Original cost of real estate sold on contract including cost of improvements thereon
4. Rate of dividends paid on shares for five year period immediately preceding the assessment year:
   19..... , 19..... , 19..... , 19..... , 19.....
5. Losses charged off during five year period immediately preceding assessment year:
   19..... , 19..... , 19..... , 19..... , 19.....
6. Other data affecting the value of the capital as evidenced by the shares and the earned reserves:

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year Beginning January 1, 194....

Item	Shares Par Value	Number	Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:* Repurchasable, Free or Investment Shares or Accounts:				
1.			229,566.	
2.				
3.				
4.				

5.			
6.			
7.	*Total privately owned shares (Sum of items 1 to 6)		229,566.
8.	U. S. Treasury investment		
9.	H. O. L. C. investment	45,000.	
10.	Total Government owned shares		45,000
11.	*Total Free Shares (sum of items 7 and 10)		274,566.
	Other Capital:		
12.	Surplus		
13.	Undivided profits		
14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves).		
16.	Mortgage Loans $333,029.		
	Actual Value	233,126.	
17.	Real Estate Notes 11,241.		
	Actual Value	7,869.	
18.	Cash, Actual Value	15,369.	
19.	Stock Fed. H. L. Bank 6,000.		
	Actual Value	3,000.	
20.	F. & F.	1.	
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive)		259,365.
24.	Total capital (sum of items 11 and 23)		259,365.
	Deductions:		
25.	Current operating expense		

26. Assessed value of real estate as fixed by the assessor Cost $21,000.00	16,150.	
27. Other deductible liabilities (if properly deductible)		
28. Total Deductions (Sum of items 25, 26 and 27)		
Net Capital:		
29. Net capital (item 24 less item 28)		259,365.
Net Value per Dollar of Invested Capital:		
30. Net value per dollar of invested capital (item 29 divided by item 11)		.944
Assessed Value of Privately Owned Shares:		
31. Assessed value of privately owned shares (item 7 times item 30)		216,710.

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

page 243] S. T. C. O. Form No. 4A—Tax Return

Annual Return of the Taxable Property
of the
First Federal Savings & Loan Association of Charleston

Engaged in Business in
Charleston District
Charleston Municipality

The address of the Corporation making this return:

Room 57, Capital City Bldg.
Charleston, W. Va.
Received and Filed

Date.....

.....

Assessor.

Total Amount Returned for Taxation

	B of E & R
Class No. 1 (170,450.)	$ 249,080
Class No. 3 or 4	$.....
Total All Classes	$.....

Page ..... Line ..... Personal Property Book

Oath

State of West Virginia,
County of Kanawha, ss:

I, A. G. Thompson.....Attorney
(Name of Officer) (Official Title)
of the First Federal Savings & Loan Association Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

(Signed) A. G. THOMPSON.

Subscribed and sworn to before me by .....,
this the..... day of ..... 19.....

.....

.....

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which

shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 244] WILKINSON EXHIBIT No. 5

West Virginia Building & Loan Association
226½ Capitol St. Charleston

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year Beginning January 1, 194....

Item (a)	Shares Par Value (b)	Number (c)	Amount (d)	Amount (e)
Capital Stock or Shares:*				
Repurchasable, Free or Investment Shares or Accounts:				
1. Full paid shares	100		55,100.00	
2. Installment Shares			9,541.17	
3.				
4.				
5.				
6.				
7. *Total privately owned shares (Sum of items 1 to 6)				64,641.17
8. U. S. Treasury investment				
9. H. O. L. C. investment			10,000.00	
10. Total Government owned shares				10,000.00
11. *Total Free Shares (sum of items 7 and 10)				74,641.17
Other Capital:				
12. Surplus				

13.	Undivided profits	1,710.91	
14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves):		
16.	Deferred Loan fees	3,588.10	
17.	Federal Insurance Reserve	594.75	
18.	Contingent Reserve	30.00	
19.	Uncollected Interest	22.58	
20.			
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive)		5,926.34
24.	Total capital (sum of items 11 and 23)		80,567.51

Deductions:

25.	Current operating expense		
26.	Assessed value of real estate as fixed by the assessor		
27.	Other deductible liabilities (if properly deductible)	259.20	
28.	Total Deductions (Sum of items 25, 26 and 27)		259.20

Net Capital:

29.	Net capital (item 24 less item 28)	80,308.31

Net Value per Dollar of Invested Capital:

30.	Net value per dollar of invested capital (item 29 divided by item 11)	$1.075

Assessed Value of Privately Owned Shares:

31.	Assessed Value of privately owned shares (item 7 times item 30)	$69,490.00

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

Date 5-19-41 JLV
Robert Watt, Secy.
G. F. Wilkinson, Dep. Assessor

page 244a] Oath

State of West Virginia,
County of ..... ss:

I, ...
(Name of Officer) (Official Title)
of the .....
Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

.....

Subscribed and sworn to before me by .....
this the ..... day of ..... 19 .....

.....

.....

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which

shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 245] WILKINSON EXHIBIT No. 6

Copy

Company—Charleston Finance Company.
Principal Office—613 Lee Street, Charleston.
County—Kanawha.

Balance Sheet Statement as of December 31, 1940

Assets:

Cash	621.14	
Installment Notes	495,352.85	
Furniture & Fixtures	4,981.79	

Liabilities:

Notes Payable		410,000.00
Accts		40,863.69
Reserve for doubtful notes		23,435.46
Reserve for Depr., Furn. & Fix.		1,320.31
Reserve for Taxes		8,332.00
Capital Stock		10,000.00
Earned Surplus		7,004.32
Total	500,955.78	500,955.78

Computation of Value:

	Book Value	Assessed Value
Cash	621.14	621.14
Installment Notes Less 15%	495,352.85	421,000.00
Total Class I		$421,620
Furn. & Fix. (Net)	$3,660.	

page 246] WILKINSON EXHIBIT No. 7

Copy

Company—Colonial Finance Company.
Principal Office—110 Hale Street, Charleston.
County—Kanawha.

Balance Sheet Statement as of December 31, 1940

Assets:		
Cash	89.58	
Loans Res.	41,786.77	
Discounts Res.	32,925.22	
Contracts in Process	720.00	
Furniture & Fixtures	647.00	
Liabilities:		
Unearned Finance Charges Net		2,457.33
Branch office Capital		72,281.15
Int. on Small Loans		2.74
Earned Disct.		1,243.23
Other Income		132.00
Reserve for loss		52.12
	76,168.57	76,168.57

Computation of Value: Class I

	Book Value	Assessed Value
Cash	89.58	89.58
Loans & Discounts Less 15%	74,711.99	63,505.19
Contracts in Process	720.00	
Total Class One		$63,207.00
Furn. & Fix. Class	647.00	

page 247] WILKINSON EXHIBIT No. 8
Copy

Company—Home Finance Company., Inc
D. R. Witters, Asst. Mgr.
Principal Office—804 Quarrier St., Charleston.
County—Kanawha.

Balance Sheet Statement as of December 31, 1940

Assets:

Cash		3,777.68
Loans		103,491.14
Autos		623.00
	Net	
F. & F.	1,246.28	
Less Dep.	477.84	774.44
Prepaid Expense		226.89
Advance on Dividends		525.00

Liabilities:

Notes Payable	13,000.00
Dividends Payable	135.80
Reserve for Losses	6,143.63
Savings Plan for Employees	71.50
Federal Old Age Benefits Collected	17.85
Capital Stock	45,300.00
Undivided Profits	16,549.37
Capital Surplus	28,200.00
Total	109,418.15 109,418.15

Computation of Value:

	Book Value	Assessed Value
Cash	3,777.68	3,777.68

Loans	103,491.14	87,967.35
Total Class One		91,740.
Class 4:		
Auto (Net)	623.00	
F. & F.	774.44	
	1,397.44	

page 248] WILKINSON EXHIBIT No. 9

Copy

Company—Household Finance Corporation—
G. L. Nash.
Principal Office—Knight Building, Charleston.
County—Kanawha.

Balance Sheet Statement as of December 31, 1940

Assets:		
Loans	290,018.91	
Cash—Bank	6,251.16	
Cash—Office	2,303.83	
Leasehold—(Office)	1,578.14	
Furniture & Fixtures	2,579.35	
Office Machines	667.44	
Liabilities:		
Reserve for Amort. Leasehold		371.36
Reserve for Dep. F. & F.		847.97
Reserve for Dep. Office Mach.		79.46
Payroll tax withheld		24.55
Capital		302,075.49
Total	303,398.83	303,398.83

Computation of Value:

	Book Value	Assessed Value
Loans	290,018.91	246,515.00
Cash	8,554.99	8,554.99
Total Class I		255,070.00

Class 4:

Leasehold (Net)	1,200.00
F. & F. & Machines (Net)	2,320.00

page 249] WILKINSON EXHIBIT No. 10

State of West Virginia
S. T. C. O. Form No. 3-C
(Supplement to Forms Numbers Two and Three)

..... District ..... County

Balance Sheet for Corporations, Firms, or Partnerships
(This Form must be filed as a supporting detail to
S. T. C. O. Forms Nos. 2 and 3)

For (Name) ..... (Address) .....

Instructions

The Assessor will find true and actual values, but the following may be used as guides for ascertaining value.

In making up this balance sheet of your business, it will be necessary to use true and correct figures from your record, that they may be verified by your record when audited by the proper authority.

All inventories are to be based upon actual market cost prices as of the first day of the year for which this return is made.

Allow the following bases of discount for losses, shrinkage or depreciation from your balance sheet in making up this return to arrive at the true and actual market value of your property for tax purposes.

Class No. 1—Intangible Personal Property.

Cash:

Report total cash on hand and in banks at 100%.

Bonds:

Report all bonds at market value.

Accounts Receivable—Not Installments:

Deduct from total, amount of reserve for bad debts and report 75% of remainder as the value.

(Note: If books are not handled on reserve, allow 5% for bad debts in place of reserve. If more than 50% is claimed for bad debts, you must submit a list giving names, addresses, amount due and date of last payment for each account claimed as bad.)

Accounts Receivable—Installments:

Deduct 20% for reserve, losses and expense of collecting and report remainder, if secured. 45% may be deducted if unsecured.*

Notes Receivable Secured:

If interest bearing, report 85% of face value, and if non-interest bearing notes, report 80% of face value.*

Notes Receivable—Unsecured:

Deduct from total, amount of reserve for bad notes and report 80% of remainder if interest bearing and 75% if non-interest bearing.*

Notes Receivable—Installments Running Five Years or More:

If interest bearing, report 80% of face value and if without interest report 75% of face value, if secured. 45% may be deducted if unsecured.*

Classes Nos. 3 and 4—Tangible Personal Property.

Equipment and Machinery:

Automobiles, Trucks, Wagons, Motors, Scales, Tools, Engines, Boilers, Machinery and equipment of all kinds, in-

cluding Store fixtures and equipment, Office furniture and equipment: Deduct depreciation reserve and report 75% of remainder. Depreciation may not be deducted in excess of 50% of original cost. Federal income tax rates for depreciation may be used up to 50% of original cost.

Merchandise—Wholesale and Retail:

Allow 40% for reserve, shrinkage and depreciation on all classes of merchandise, and report the remainder.

Inventories of Manufactories:

Report actual cost of inventories finished or unfinished including cost of material, labor and expense and deduct 25% for depreciation, obsolescence and shrinkage.

---

*If greater deductions than herein set forth are claimed on account of bad debts or for other reasons, they will not be allowed unless supplementary proof is submitted such as names and addresses debtors, data as to their ability to pay and as to the value of collateral.

page 250] Form No. 3-C. Corporation Balance Sheet

For (Name) ..... (Address) .....

Year Ended December 31, 193.... or ....., 193....
(Fiscal Year)

Assets	Book Val.	Val. by Company	Val. by Assessor
1 Money—Credits and Investments			
2 Deposits in West Virginia Banks			
3 Deposits in Banks Outside West Virginia			
4 Cash on Hand			
5 Deposits—Checks—Credits, etc., Elsewhere			
6 Accounts Receivable			
7 Less Reserve ....%			

8 Notes Receivable
9 Less Reserve ..... %
10 Interest

---

11 Bank Accounts Receivable
12 Notes, Bills, and Other
13 Investments

---

14 Industrial Bonds, etc.
15 Government Bonds, etc. (Non-Taxable)
16 Building and Loan Stocks, Bonds, Certificates
17 Farm and Federal Stocks, Bonds, and Certificates
18 Notes, Liens, Mortgages, Chattels, etc.
19 Industrial Stocks (Taxable at Source)
20 Other Non-Taxable Items (List)
21 Deferred—Charges

---

22 Prepaid—Insurance and Taxes
23 Prepaid—Interest and Other Items
24 Unamortized Items
25 Patents, Good Will, etc.

---

26 Total—Taxable Items (Class I)

---

27 Total—Non-Taxable Items

28
29 Capital Assets

---

30 Real Estate
31 Land
32 Buildings
33 Total
34 Less Depreciation ..... %

---

35 Total Real Estate (Classes III and IV)

36

37 Machinery and Equipment

38 Less Depreciation.....%.....

39 Total Machinery and equipment

40 Delivery Equipment

41 Autos: No.....Make.....Yr.....

42 Trucks: No.....Make.....Yr.....

43 Other: No.....Kind.....Size.....

44 Total Delivery Equipment

45 Less Depreciation.....%.....

46 Net Delivery Equipment (Classes III and IV)

47 Store & Office Furniture and Fixtures in this County

48 Store & Office Furniture and Fixtures Elsewhere

page 251] Corporation Balance Sheet

Assets	Book Val.	Val. by Company	Val. by Assessor
49 Inventories:			
50 Manufacturing or Refining			
51 Raw Materials			
52 Work in Process (Incl. Mat. Lab. & Exp.)			
53 Finished Goods (Incl. Mat. Lab. & Exp.)			

54 Stored in This County
55 Stored in Other Counties, etc.
56 Supplies
57 Merchandising—Mining and Others

58 Goods Held for Sale
59 Supplies
60 Consigned Goods $
61 Other

62 Total Inventories

63 Less Depreciation and Shrinkage

64 Net Inventories (Classes III and IV)

65

66 Total Tangible Property
(39-46-47-48-64)

67
68 Total all Assets (26-27-35-66)
69
70

71 Liabilities

72
73 Notes Payable
74 Accounts Payable
75 Bonds and Mortgages
76 Accrued Expenses
77 Interest
78 Taxes
79 Insurance
80 Other

81 Other Liabilities (Describe)
82
83 Capital Stock

84 Preferred (Outstanding)
85 Common (Outstanding)
86 Special (Outstanding)
87
88

89 Surplus

90 Undivided Profits

91

92 Total Liabilities

Oath: I swear/affirm that the foregoing balance sheet has been examined by me, and, to the best of my knowledge and belief, it contains a full and correct copy of the balance sheet figures for the year stated as reported by the Corporation herein named, and does agree with the books and accounts of said Corporation.

Subscribed and sworn to before me by ....., this the ..... day of ....., 19 ....

[page 252] WILKINSON EXHIBIT No. 11

For Identification 1940

Name Charleston Federal Savings & Loan Ass'n.
Principal Office Charleston.
District ..... County Kanawha

Item	Shares Par Value	Shares Number	Amount	Amount
Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):				
1 Investment & Saving Shares			675,928.97	
2				
3				
4				
5				
6				
7 Total privately owned shares (sum of items 1 to 6)				675,928.97
8 U. S. Treasury investment				
9 H.O.L.C. investment				
10 Total Government owned shares				
11 Total Free Shares (sum of items 7 and 10)				675,928.97
Other Capital:				
12 Surplus				
13 Undivided profits			22,745.97	
14 Current income				
15 Earned reserves (itemized, exclusive of actual expense reserves)				

16	Contingent Fund	9,300.00	
17	Deferred Income	32,268.09	
18	Reserve for Uncollected Interest	478.24	
19	Reserve for Insurance	5,500.00	
20			
21			
22			
23	Total (sum of items 12 to 22 inclusive)		70,292.30
24	Total capital (sum of items 11 and 23)		746,221.27

Deductions:

25	Current operating expense		
26	Assessed value of real estate as fixed by the Assessor	19,000.00	
27	Other deductible liabilities (if properly deductible)		
28	Total Deductions (sum of items 25, 26 and 27)		19,000.00

Net Capital:

29	Net capital (item 24 less item 28)	727,221.27

Net Value per Dollar of Invested Capital:

30	Net value per dollar of invested capital (item 29 divided by item 11)	

Assessed value of privately owned shares

31	Assessed value of privately owned shares (item 7 times item 30)	727,220

2

Date

List representatives of assessor and institution on back of this sheet.

page 253] WILKINSON EXHIBIT No. 12
For Identification 1940

Name Empire Federal Savings & Loan Ass'n.
Principal Office .....
District ..... County .....

Item	Par Value	Shares Number	Amount	Amount
Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):				
1. Free Shares (Private)			202,945.88	
2.				
3.				
4.				
5.				
6.				
7. Total privately owned shares (sum of items 1 to 6)				
8. U. S. Treasury investment				
9. H. O. L. C. investment			50,000.—	
10. Total Government owned shares				
11. Total Free Shares (sum of items 7 and 10)				202,945.88
Other Capital:				
12. Surplus				
13. Undivided profits			22,017.44	

14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves). Accrued interest unpaid	668.75	
16.	Dividends declared and unpaid	4,778.78	
17.	Uncollected interest	1,911.41	
18.	Federal Insurance Reserve	429.45	
19.	Contingencies	2,754.00	
20.			
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive		32,559.83
24.	Total capital (sum of items 11 and 23)		235,505.71

Deductions:

25.	Current operating expense		
26.	Assessed value of real estate as fixed by the Assessor	850.—	
27.	Other deductible liabilities (if properly deductible)		
28.	Total Deductions (Sum of items 25, 26 and 27)		850

Net Capital:

29.	Net capital (item 24 less item 28)	234,655.71

Net Value per Dollar of Invested Capital:

30. Net value per dollar of invested capital (item 29 divided by item 11)

Assessed Value of Privately Owned Shares:

31.	Assessed value of privately owned shares (item 7 times item 30)	234,655.

2

Date

List representatives of assessor and institution on back of this sheet.

page 254] WILKINSON EXHIBIT No. 13
For Identification 1940

Name First Federal Savings & Loan Ass'n.
Principal Office Charleston
District ..... County Kanawha

Item	Par Value	Shares Number	Amount	Amount
Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):				
1. Installment Thrift Shares		12,535.46		
2. Full paid Income Shares		178,600.00		
3.				
4.				
5.				
6.				
7. Total privately owned shares (sum of items 1 to 6)				191,135.46
8. U. S. Treasury investment				
9. H. O. L. C. investment				
10. Total Government owned shares				
11. Total Free Shares (sum of items 7 and 10)				191,135.46

Other Capital:			
12.	Surplus		
13.	Undivided profits	11,782.52	
14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves):		
16.	Reserve for Uncollected Interest	164.09	
17.	Federal Insurance Reserve	4,062.79	
18.	Reserve for Contingencies	8,993.27	
19.	Contingent Deposit	601.46	
20.			
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive)		25,604.13
24.	Total capital (sum of items 11 and 23)		216,739.59
Deductions:			
25.	Current operating expense		
26.	Assessed value of real estate as fixed by the Assessor	16,150.00	
27.	Other deductible liabilities (if properly deductible)		
28.	Total Deductions (Sum of items 25, 26 and 27)		16,150.00
Net Capital:			
29.	Net capital (item 24 less item 28)		200,589.59
Net Value per Dollar of Invested Capital:			
30.	Net value per dollar of invested capital (item 29 divided by item 11)		

Assessed Value of Privately Owned Shares:

31. Assessed Value of privately owned shares (item 7 times item 30)	200,590.

2
Date

List representatives of assessor and institution on back of this sheet.

page 255] WILKINSON EXHIBIT No. 14
For Identification 1940

Name West Virginia Building & Loan Ass'n.
Principal Office .....
District ..... County .....

Item	Amount	Amount
Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):		
1. Full paid Stock	49,100.—	
2. Installment Stock	9,239.27	
* * * * * *		
7. Total privately owned shares (sum of items 1 to 6)		58,339.27
* * * * * *		
9. H. O. L. C. investment	10,000.—	
10. Total Government owned shares		10,000.—
11. Total Free Shares (sum of items 7 and 10)		48,339.27
Other Capital:		
* * * * * *		
13. Undivided profits	925.57	
* * * * * *		

16.	Delinquent interest	30.29	
17.	Contingent fund	30.00	
18.	Federal Insurance Reserve	391.42	
	* * * * * *		
23.	Total (sum of items 12 to 22 inclusive)		1,377.28
24.	Total capital (sum of items 11 and 23)		49,716.55
	Deductions:		
25.	Current operating expense		
26.	Assessed value of real estate as fixed by the Assessor	None	
27.	Other deductible liabilities (if properly deductible)		
28.	Total Deductions (sum of items 25, 26 and 27)		
	Net Capital:		
29.	Net capital (item 24 less item 28)		49,716.55

page 256] WATT EXHIBIT No. 1

S. T. C. O. Form 4A

For Use of
Building and Loan and Federal Savings and Loan Associations

State of West Virginia

Annual Tax Return of West Virginia Building & Loan Association of ..... in ..... District ..... County, for the assessment year beginning January 1, 194....

To ..... Assessor of ..... County.

Schedule A. Real Estate Owned. (List all property owned whether located within or outside of this State. First, list the taxing district in which the property is situated and

then under such taxing district list all the property owned in that district. Fill in all columns including the Assessed Value.)

Description as shown on Land Books or Tax Duplicate	Value		
	Buildings on Lot	Lot	Lot and Buildings Assessed
Within Municipalities:			
Outside Municipalities:			

page 257] Schedule B. Balance Sheet as of the Close of Business of the Year Immediately Preceding the Tax year:

	Amount	Total
1. First mortgage loans:		
a. Direct reduction loans		
b. Share account sinking fund loans		
c. Straight loans		
d. Accrued interest receivable (if separate)		
e. Advances for taxes, insurance, etc.		
f. Other loans		
Total first mortgages		
2. Second mortgage loans		
3. Loans secured by shares		
4. Real estate:		
a. Sold on contract		
b. Owned		
c. In judgment and subject to redemption		
Total real estate		
5. Investment securities:		
a. Stock in F. H. L. Bank		

b. F. H. L. B. Bonds
c. U. S. Government obligations (including H. O. L. C. Bonds)
d. Other investment securities

Total investment securities
6. Accrued interest on investments
7. Cash on hand and in banks
8. Office building:
a. Original cost
b. Accrued depreciation

Original cost less depreciation (8a less 8b)
9. Furniture, fixtures and equipment:
a. Original cost
b. Accrued depreciation

Original cost less depreciation (9a less 9b)
10. Deferred charges:
a. Prepaid bond and insurance premiums
b. Organization expense
c. Other

Total
11. Other assets:
a.
b.

Total
12. Current operating expense

Total Assets
13. Repurchasable or free shares:
a. Total private shares
b. U. S. Treasury investment
c. H. O. L. C. investment

Total

14. Mortgaged pledged shares
15. Advances from F. H. L. Bank
16. Other liabilities for borrowed money
17. Interest:
    a. On advances from F. H. L. Bank
    b. On other liabilities for borrowed money
18. Dividends declared but unpaid
19. Taxes accrued on real estate owned.
20. Accounts payable
21. Loans in process
22. Advance payments by borrowers for taxes, insurance, etc.
23. Other liabilities:
    a.
    b.

    Total
24. Deferred credit to future operations:
    a. Unearned profit on real estate sold
    b. Income collected in advance

    Total
25. Specific reserves:
    a. Uncollected interest
    b. Junior liens
    c. Furniture and fixtures

    Total
26. General reserves:
    a. Taxes
    b. Federal insurance
    c. Real estate
    d. Other

    Total
27. Bonus on shares.
28. Undivided profits

29. Current income

Total Liabilities

page 258] Schedule C. Supplemental Information.

1. Balance remaining unpaid on real estate sold on contract
2. Balance paid on real estate sold on contract
3. Original cost of real estate sold on contract including cost of improvements thereon
4. Rate of dividends paid on shares for five year period immediately preceding the assessment year:
   19..... , 19..... , 19..... , 19..... , 19.....
5. Losses charged off during five year period immediately preceding assessment year:
   19..... , 19..... , 19..... , 19..... , 19.....
6. Other data affecting the value of the capital as evidenced by the shares and the earned reserves:

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year Beginning January 1, 194....

Item	Shares			
	Par Value	Number	Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:* Repurchasable, Free or Investment Shares or Accounts:				
1. Installment Stock			9,541.17	
2. Full Paid Stock			55,100.00	
3.				
4.				
5.				

6.			
7.	*Total privately owned shares (Sum of items 1 to 6)		64,641.17
8.	U. S. Treasury investment	10,000.00	
9.	H. O. L. C. investment		
10.	Total Government owned shares		10,000.00
11.	*Total Free Shares (sum of items 7 and 10)		
	Other Capital:		
12.	Surplus		
13.	Undivided profits		
14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves):		
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive)		
24.	Total capital (sum of items 11 and 23)		74,641.17
	Deductions:		
25.	Current operating expense		
26.	Assessed value of real estate as fixed by the assessor		
27.	Other deductible liabilities (if properly deductible) H.O.L.C. Investment	10,000.00	

28. Total Deductions (Sum of items 25, 26 and 27)	10,000.00
	64,641.17
Net Capital:	
29. Net capital (item 24 less item 28) Less 30% to equalize taxes on similar property	19,392.35
Net Value per Dollar of Invested Capital:	
30. Net value per dollar of invested capital (item 29 divided by item 11)	
Assessed Value of Privately Owned Shares:	
31. Assessed value of privately owned shares (item 7 times item 30)	45,248.82

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

page 259] S. T. C. O. Form No. 4A—Tax Return

Annual Return of the Taxable Property
of the

.....

Engaged in Business in

.....District

.....Municipality

The address of the Corporation making this return:

.....

.....

Received and Filed

Date.....

.....

Assessor.

Total Amount Returned for Taxation

Class No. 1	$.....
Class No. 3 or 4	$.....
Total All Classes	$.....

Page..... Line..... Personal Property Book

Oath

State of West Virginia,
County of Kanawha, ss:

A, Robt. Watt ..... Secretary-Treasurer
(Name of Officer) (Official Title)
of the West Virginia Building & Loan Association Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

ROBT. WATT
Secretary-Treasurer

Subscribed and sworn to before me by Robt. Watt, this the 17th day of July, 1941.

REUELL E. SHERWOOD,
Notary Public.

My commission expires Oct. 9, 1942.

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which

shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 260] EMPIRE FED. SAV. & LOAN ASSN. EXHIBIT No. 1

Copy

S. T. C. O. Form 4A
For Use of
Building and Loan and Federal Savings and Loan Associations
State of West Virginia

Annual Tax Return of Empire Federal Savings & Loan Assn. of Charleston in Charleston District Kanawha County, for the assessment year beginning January 1, 194 .

To J. H. Abbott, Assessor of Kanawha County,

Schedule A. Real Estate Owned. (List all property owned whether located within or outside of this State. First, list the taxing district in which the property is situated and then under such taxing district list all the property owned in that district. Fill in all columns including the Assessed Value.)

Description as shown on Land Books or Tax Duplicate	Value Buildings on Lot	Lot	Lot and Buildings	Assessed
Within Municipalities:				
Outside Municipalities:				850.00

page 261] Schedule B. Balance Sheet as of the Close of Business of the Year Immediately Preceding the Tax Year:

	Amount	Total
1. First mortgage loans:		
a. Direct reduction loans		
b. Share account sinking fund loans		

c. Straight loans
d. Accrued interest receivable (if separate)
e. Advances for taxes, insurance, etc.
f. Other loans

Total first mortgages

2. Second mortgage loans
3. Loans secured by shares
4. Real estate:
   a. Sold on contract.
   b Owned.
   c. In judgment and subject to redemption

Total real estate

5. Investment securities:
   a. Stock in F. H. L. Bank
   b. F. H. L. B. Bonds
   c. U. S. Government obligations (including H. O. L. C. Bonds)
   d. Other investment securities

Total investment securities

6. Accrued interest on investments
7. Cash on hand and in banks
8. Office building:
   a. Original cost
   b. Accrued depreciation

Original cost less depreciation (8a less 8b)

9. Furniture, fixtures and equipment:
   a. Original cost
   b. Accrued depreciation

Original cost less depreciation (9a less 9b)

10. Deferred charges:
    a. Prepaid bond and insurance premiums
    b. Organization expense

c. Other

Total

11. Other assets:
    a.
    b.

Total

12. Current operating expense

Total Assets

13. Repurchasable or free shares:
    a. Total private shares
    b. U. S. Treasury investment
    c. H. O. L. C. investment

Total

14. Mortgaged pledged shares
15. Advances from F. H. L. Bank
16. Other liabilities for borrowed money
17. Interest
    a. On advances from F. H. L. Bank
    b. On other liabilities for borrowed money
18. Dividends declared but unpaid
19. Taxes accrued on real estate owned
20. Accounts payable
21. Loans in process
22. Advance payments by borrowers for taxes, insurance, etc.
23. Other liabilities:
    a.
    b.

Total

24. Deferred credit to future operations:
    a. Unearned profit on real estate sold
    b. Income collected in advance

Total

25. Specific reserves:
    a. Uncollected interest
    b. Junior liens
    c. Furniture and fixtures

Total

26. General reserves:
    a. Taxes
    b. Federal insurance
    c. Real estate
    d. Other

Total

27. Bonus on shares
28. Undivided profits
29. Current income

Total Liabilities

page 262] Schedule C. Supplemental Information.

1. Balance remaining unpaid on real estate sold on contract
2. Balance paid on real estate sold on contract
3. Original cost of real estate sold on contract including cost of improvements thereon
4. Rate of dividends paid on shares for five year period immediately preceding the assessment year:

19..... , 19..... , 19..... , 19..... , 19

5. Losses charged off during five year period immediately preceding assessment year:

19..... , 19..... , 19..... , 19..... , 19

6. Other data affecting the value of the capital as evidenced by the shares and the earned reserves:

Schedule D. Computation of Value for Assessment and Taxation Purposes, Assessment Year beginning January 1, 194.....

Item	Par Value	Shares Number	Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:*				
Capital Stock or Shares (repurchasable, free or investment shares or accounts:)				
1	100.00	244,758.35		
2				
3				
4				
5				
6				
7 *Total privately owned shares (Sum of items 1 to 6)				244,758.35
8 U. S. Treasury investment				
9 H. O. L. C. investment			50,000.00	
10 Total Government owned shares				50,000.00
11 *Total Free Shares (sum of items 7 and 10)				294,758.35
Other Capital:				
12 Surplus				
13 Undivided profits				
14 Current income				
15 Earned reserves (itemized, exclusive of actual expense reserves)				
16				
17				
18 H. O. L. C. Investment			50,000.00	
19				

20		
21		
22		
23 Total (sum of items 12 to 22 inclusive)		50,000.00
24 Total capital (sum of items 11 and 23)		244,758.35
Deductions:		
25 Current operating expense		
26 Assessed value of real estate as fixed by the assessor	850.00	
27 Other deductible liabilities (if properly deductible)		
28 Total Deductions (sum of items 25, 26 and 27)		850.00
Net Capital:		
29 Net capital (item 24 less item 28)		243,908.35
Net Value per Dollar of Invested Capital: Less 30% *		73,172.50
Assessed value of privately owned shares		
31 Assessed value of privately owned shares (item 7 times iten 30)		170,735.85

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

* To equalize assessable value with other properties of the same class assessed generally.

page 263] S. T. C. O. Form No. 4A—Tax Return

Annual Return
of the Taxable Property
of the

.....

.....

Engaged in Business in

.....District

.....Municipality

The address of the Corporation making this return:

.....

.....

Received and Filed

Date.....

.....

Assessor.

Total Amount Returned for Taxation

Class No. 1	$.....
Class No. 3 or 4	$.....
Total All Classes	$.....

Page..... Line..... Personal Property Book

Oath

State of West Virginia,
County of Kanawha, ss:

I, Delbert T. Robinson (Name of Officer) Secy. & Treas. (Official Title)

of the ..... Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and ac-

tual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

DELBERT T. ROBINSON.

Subscribed and sworn to before me by Delbert T. Robinson, this the 18" day of July, 1941.

REUEL E. SHERWOOD, N. P.

My Commission expires .....

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining

the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such

association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 264] EMPIRE SAV. & LOAN CO.

EXHIBIT No. 1

S. T. C. O. Form 4A
For Use of
Building and Loan and Federal Savings and Loan Associations
State of West Virginia

Annual Tax Return of Empire Sav. & Loan Co. of Charleston, in Charleston, District Kanawha County, for the assessment year beginning January 1, 194.....

To J. H. Abbott, Assessor of Kanawha County.

Schedule A.—Real Estate Owned. (List all property owned whether located within or outside of this State. First, list the taxing district in which the property is situated and then under such taxing district list all the property owned in that district. Fill in all columns including the Assessed Value.)

Description as shown on Land Books or Tax Duplicate	Value Buildings on Lot	Lot	Lot and Buildings Assessed
Within Municipalities:			
Outside Municipalities:			

page 265] Schedule B. Balance Sheet at of the Close of Business of the Year Immediately Preceding the Tax year:

	Amount	Total
1. First mortgage loans:		
a. Direct reduction loans		
b. Share account sinking fund loans		
c. Straight loans		
d. Accrued interest receivable (if separate)		
e. Advances for taxes, insurance, etc.		
f. Other loans		
Total first mortgages		
2. Second mortgage loans		
3. Loans secured by shares		
4. Real estate:		
a. Sold on contract		
b. Owned		
c. In judgment and subject to redemption		
Total real estate		
5. Investment securities:		
a. Stock in F. H. L. Bank		
b. F. H. L. B. Bonds		
c. U. S. Government obligations (including H. O. L. C. Bonds)		

d. Other investment securities

Total investment securities

6. Accrued interest on investments
7. Cash on hand and in banks
8. Office building:
   a. Original cost
   b. Accrued depreciation

Original cost less depreciation (8a less 8b)

9. Furniture, fixtures and equipment:
   a. Original cost
   b. Accrued depreciation

Original cost less depreciation (9a less 9b)

10. Deferred charges:
    a. Prepaid bond and insurance premiums
    b. Organization expense
    c. Other

Total

11. Other assets:
    a.
    b.

Total

12. Current operating expense

Total Assets

13. Repurchasable or free shares:
    a. Total private shares
    b. U. S. Treasury investment
    c. H. O. L. C. investment

Total

14. Mortgaged pledged shares
15. Advances from F. H. L. Bank

16. Other liabilities for borrowed money
17. Interest:
    a. On advances from F. H. L. Bank
    b. On other liabilities for borrowed money
18. Dividends declared but unpaid
19. Taxes accrued on real estate owned.
20. Accounts payable
21. Loans in process
22. Advance payments by borrowers for taxes, insurance, etc.
23. Other liabilities:
    a.
    b.

    Total
24. Deferred credit to future operations:
    a. Unearned profit on real estate sold
    b. Income collected in advance

    Total
25. Specific reserves:
    a. Uncollected interest
    b. Junior liens
    c. Furniture and fixtures

    Total
26. General reserves:
    a. Taxes
    b. Federal insurance
    c. Real estate
    d. Other

    Total
27. Bonus on shares.
28. Undivided profits
29. Current income

    Total Liabilities

'page 266] Schedule C. Supplemental Information.

1. Balance remaining unpaid on real estate sold on contract
2. Balance paid on real estate sold on contract
3. Original cost of real estate sold on contract including cost of improvements thereon
4. Rate of dividends paid on shares for five year period immediately preceding the assessment year:
   19 , 19 , 19 , 19 , 19
5. Losses charged off during five year period immediately preceding assessment year:
   19 , 19 , 19 , 19 , 19
6. Other data affecting the value of the capital as evidenced by the shares and the earned reserves:

Schedule D. Computation of value for assessment and taxation purposes, assessment year beginning January 1, 194....

Item	Shares			
	Par Value	Number	Amount	Amount
(a)	(b)	(c)	(d)	(e)
Capital Stock or Shares:* Repurchasable, Free or Investment Shares or Accounts:				
1. Full Paid Shares			340,960.00	
2. Installment Shares			10,415.41	
3.				
4.				
5.				
6.				
7. *Total privately owned shares (sum of items 1 to 6)				
8. U. S. Treasury investment				
9. H. O. L. C. investment				

10.	Total Government owned shares		351,375.41
11.	*Total Free Shares (sum of items 7 and 10)		
	Other Capital:		
12.	Surplus	78,153.53	
13.	Undivided profits		
14.	Current income		
15.	Earned reserves (itemize, exclusive of actual expense reserves).		
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.	Total (sum of items 12 to 22 inclusive		78,153.53
24.	Total capital (sum of items 11 and 23)		429,528.94
	Deductions:		
25.	Current operating expense		
26.	Assessed value of real estate as fixed by the assessor	135,720.00	
27.	Other deductible liabilities (if properly deductible)		
28.	Total Deductions (Sum of items 25, 26 and 27)		135,720.00
	Net Capital:		
29.	Net capital (item 24 less item 28)		293,808.94

Net Value per Dollar of Invested Capital:

30. Net value per dollar of invested capital (item 29 divided by item 11) Less 30% *	88,142.68
Assessed Value of Privately Owned Shares:	
31. Assessed value of privately owned shares (item 7 times item 30)	205,666.26

*Capital stock or shares, repurchasable, free or investment shares or accounts as used here are intended to embrace all shares of stock and accounts subscribed to or purchased as an investment unaccompanied by the securing of a loan, regardless of the name or term that may be used by the taxpayer to designate such shares or accounts. In other words, it is the interest of an investing shareholder as distinguished from the interest of the borrowing shareholder.

*To equalize assessable value with other properties of the same class as assessed generally.

266a] S. T. C. O. Form No. 4A—Tax Return

Annual Return of the Taxable Property
of the

.....

Engaged in Business in

.....District

.....Municipality

The address of the Corporation making this return:

.....

.....

Received and Filed

Date.....

.....

Assessor.

Total Amount Returned for Taxation

Class No. 1 $.....

Class No. 3 or 4 $.....

Total All Classes $.....

Page..... Line..... Personal Property Book

Oath

State of West Virginia,
County of Kanawha, ss:

I, Delbert T. Robinson ..... Sec.-Treas.
(Name of Officer) (Official Title)
of the Empire Sav. & Ln. Co. .....
Company, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including money, credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; so help me God.

DELBERT T. ROBINSON

Subscribed and sworn to before me by Delbert T. Robinson, this the 18 day of July, 1941.

ROBT. WATT
Notary Public.

My Commission expires Feb. 16, 1948.

Notice

This return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on the blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Real Estate located outside of the County in which the

association is located, in addition to listing the same hereon, should be listed on Form 3 which form should be filed with the Assessor of such other county as soon as possible after the first day of January.

Acts of the Legislature of West Virginia, Regular Session 1939, Chapter 118, Article 3, Sections 12 and 14-a. Michie's Code (1939), Chapter 11, Article 3, Section 14a.

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States Government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to

answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

page 267] BOIARSKY EXHIBIT No. 1

OUR STORY

Our Association

The ideas upon which our association is founded have been put to the practical test of experience for more than a hundred years. Only the particular combination of prin-

ciples upon which we operate is comparatively new. In a brief statement, we want to acquaint you with those principles.

What a national bank is to commerce and industry, this Federal savings and loan association is to thrift and home financing. Like the national bank, our association is locally owned and locally managed. On our board of directors are some of the outstanding business and professional leaders of this community. Our active management has had long experience in serving investors and borrowers on real estate security.

We obtained our charter from the Federal Home Loan Bank Board—a permanent agency of our national government, set up in 1932 to assist home owners and investors.

We are not allowed to finance speculative real estate like vacant lots. If you own the lot, we can finance the construction of your house to be built upon it; but we are not permitted to make loans on unimproved property. Nearly all of our real estate loans must be made on homes, where values are most stable. If we had all the money in this community, we could not use it to buy stocks or other speculative securities. While speculation has a legitimate place in our economic system—for those with the re-

page 268] sources and the temperament to engage in it—it does not belong with thrift and home ownership.

At irregular intervals, representatives of the Federal Home Loan Bank Board appear unannounced at our office and take over our books and records for examination. This is done with our hearty approval because we know that this procedure gives desirable protection to our investors and our borrowers.

Our Savings and Investment Accounts

Ours is a mutual institution. All investors have equal opportunity to share our prosperity. In sharing our success you may choose any one of several types of investment program. You may invest regular amounts in one of our

savings accounts. Some of our members invest unequal amounts from time to time rather than undertake a fixed program. Under either plan, each six months your share of our earnings is added to your investments.

For those who prefer an investment which distributes earnings in the form of cash rather than in a credit to savings, we provide an investment account. Holders of such accounts in an amount of $100 or multiples thereof are mailed semi-annual checks to cover their shares of our earnings.

Not only individuals but organizations of all kinds are eligible to make investments with us. We welcome the investment of trust funds. We have peculiar advantages to offer to trustees as well as individuals. Two or more people may have joint accounts in our association.

page 269] We assume that you save for a purpose. Perhaps you want to educate a child; to buy a home; to provide for unforeseen contingencies that occur in the life of every family; to make sure of an income in later years; or any one or more of a thousand and one purposes for which people accumulate funds. When the time arrives for you to use the funds credited to your account, we shall be pleased to extend to you the same liberal treatment enjoyed by all our members. If you are not already familiar with our withdrawal plans, we shall be glad to acquaint you with them if you will give us the opportunity. You will be pleased at their simplicity and flexibility.

Our Accounts are Insured

Since insurance of accounts was so successful in our commercial banks, the people of the United States, acting through their representatives in Congress, decided that is should be made available to holders of accounts in sound thrift and home financing institutions like ours. Accordingly, Congress set up the Federal Savings and Loan Insurance Corporation and gave it an initial capital of $100,000,000. This has since been substantially increased from its earnings.

Not every thrift and home financing institution has its accounts insured. Only those whose assets are good and whose principles of operation are sound have been able to secure the consent of the trustees of the Insurance Corporation for the insurance of their accounts. Every applicant is required to submit to a rigid examination at the time its application is filed.

The safety of every account in this association is insured up to $5000. It is possible for a man and wife to get insurance for three times this amount. For example, suppose a man has an account of $5000; then his wife has an account of a similar amount; then the two have a joint account of $5000. Each account is insured for the full amount. While most of our investors are people of modest means, the occasional family of larger means can obtain unusual protection for their investments here.

[page 270]

Insurance of Accounts Aids Borrowers

Borrowers on home mortgages as security want prompt decisions on applications for loans; a plan of repayment suited to their needs; a liberal loan that will enable them to enjoy the use of a home while they are paying for it; a reasonable rate of interest, consistent with the character of the loan; a loan plan that never requires renewal; a lending institution that understands their problems and is anxious to do everything in its power to help solve them; and a reasonable opportunity to reach the goal of every home owner—a debt-free home.

We have a lending plan that meets all of the above specifications. Furthermore, the insurance of our accounts assists our lending program. Our investors understand that unusually high returns upon investments are available only occasionally and then only where the risk of loss of the entire principal is great. For that reason they are content with the kind of a return on their money that is consistent with safety. This enables us to make loans to our borrowers at lower rates than would be possible if our investors

expected a speculative return. Hence insurance of accounts results in lower rates of interest to our borrow-
page 271] ers. Since we can depend upon this long term investment, we can afford to make liberal loans, to be repaid like rent.

Our borrowers appreciate the human side of our operations. While they fully expect to meet promptly all the terms of their contracts with us, there are occasions in the lives of many families when temporary adjustments must be made in the best of plans. Since our investors are protected by insurance of their accounts, they do not object if we do all within our power to help our borrowers meet their occasional difficulties. By this means an honest borrower is permitted to continue toward his goal of a debt-free home.

Direct Reduction Loans

By a direct reduction loan we mean one that is reduced in amount with every monthly payment by the borrower. From each monthly payment is deducted the interest on the unpaid balance of the loan for the preceding month. The remainder is applied to the principal balance and a new and correspondingly smaller principal is established for the next month. As each monthly payment is met promptly, the amount on which interest is paid grows smaller month by month.

Each month the borrower takes another step toward his goal—a debt-free home. That is why we constantly tell our borrowers that our slogan is, "We want YOU to own the home". By the use of the direct reduction loan, we can afford to make more liberal loans than we could make with any other lending plan.

Under this plan, the borrower is encouraged to make additional payments—not required by his loan
page 272] contract—whenever his savings permit. By this means he further speeds up the time when he will possess a debt-free home. To most home owners, the safest investment available is the payment of their own

debts. So from any point of view, the direct reduction loan is advantageous to the borrowers.

Sometimes borrowers on real estate security need supplementary loans to make repairs to their property; to add a new room; or to modernize some part of their improvements. The direct reduction loan is ideal for this purpose. By the time such changes are desired, the original principal will be considerably reduced. We are always glad to consider supplemental loans even though our original loan was a liberal one.

Direct Reduction Loans Aid Investors

Investors in our accounts gain several advantages from our use of the direct reduction loan. In the first place, every month each loan is safer than it was before.

In the second place, the direct reduction loan increases the return on the investment because it results in fewer defaults than any other type of loan.

Finally, the direct reduction loan results in greater liquidity. Our liquid funds come from three sources:—investments of new money; repayments on outstanding loans; and our borrowing capacity at our Federal Home Loan Bank. Our investors have more confidence in our institution because of our type of lending plan. They are more willing to leave their funds with us and to increase their investments as their resources permit. Borrowers default in their payments less frequently when they page 273] have the protection of a direct reduction loan. Our credit with our Federal Home Loan Bank is greater because we use the direct reduction loan.

So from the three points of view—safety, income, and availability—the direct reduction loan is better for the investor than is any other type of real estate mortgage.

Our Source of Reserve Cash

You are acquainted with many of the ways in which our national government has co-operated with private business in order that the American people may be better served.

For example, you know about our great Federal Reserve System which renders such valuable service to our commercial banks. This system has been in successful operation for many years.

What the Federal Reserve System is to your commercial bank, the Federal Home Loan Bank System is to this association. There are twelve regional reserve banks in this system, each serving several states.

As a member of the Federal Home Loan Bank of this region, our association has the right to call upon it for the advance of funds whenever we need them to serve our investors or our borrowers. We use the amounts that are invested with us to make loans on improved real estate, chiefly on homes. Since our investors do not look to us to supply them with a checking service, we do not normally keep a large amount of idle cash on hand. We want our investors to have the advantage of every dollar of earnings possible, so we keep our money working.

Our cash on hand is always ample to meet our normal needs. But suppose an unusually large number of home purchasers need money on the same day and come to us to supply it. Or suppose an unusually large num-

page 274] ber of our investors should decide on a particular day to use their funds for the purposes for which they had been saving them. While most of our investors usually let us know in advance when they need large amounts of money, we like to be in a position where we can accommodate every customer quickly and without any red tape.

Whenever our association needs cash, we can obtain it within a few hours from our Federal Home Loan Bank. The amount of advances we can obtain is large and varies with the amount of our loans on homes. We feel sure we will never ask for all that our line of credit would permit us to receive. It is comforting to know, however, that this fund of cash is available if we need it.

Our Friendly Service Free

The officers and employees of this association are experienced in the fields of thrift and home financing. We pull no rabbits out of the hat. We have no formula for making you rich overnight. We refuse to have anything to do with speculative schemes. But when you need advice about the investment of funds—large or small—or the financing of homes or other improved real estate, call at our office. We promise you expert advice and friendly service—all at no expense to you. Any assistance we may render you places you under no obligation to us.

We recognize the limitations of any advertising program. It is impossible for us to tell you in a booklet of this kind the whole story of our operations. That is why we repeatedly invite you to come to our office and ask the questions that will help you to understand the advantages we have to offer to both investors and borrowers.

Come in and get acquainted.

page 275] KRUEGER EXHIBIT No. 1

State of West Virginia
Charleston

George P. Alderson
State Tax Commissioner

June 24, 1941

Dear Assessor:

During the past two years the State Tax Commissioner and his representatives have made a careful and thorough study of the assessment of all kinds of property throughout the state in an effort to aid assessors in securing uniformity and equalization and in assessing all property as directed by law.

For the past several months considerable time and study has been devoted to the assessment of the properties of all financial institutions, including State and National banks, building and loan associations, Federal savings and loan associations, industrial loan companies, small loan companies and credit unions for the purpose of formulating a

method which will produce uniform and equal assessment and taxation of the properties of all such institutions and corporations throughout the State as is required by law. As a result of this study a method has been formulated which in all respects complies with constitutional and statutory provisions of the law, and sheets showing such method and the operation of same and the valuations of the properties of such institutions and corporations obtained by the use of such method, have been left with each assessor by a representative of this department.

In order that all such institutions and corporations may be treated alike and their properties assessed equally and uniformly and in compliance with the law throughtout the State, it is advisable and necessary that all assessors adopt and use this method. Therefore, I hereby respectfully request and instruct you to use such method as shown by said sheets in assessing the properties of State and National banks, building and loan associations, Federal savings and loan associations, industrial loan companies, small loan companies and credit unions. I further request and instruct you not to deviate from such method by way of discounts or in any other way or means which will produce different results or assessments than those obtained by such method as shown by such sheets, as this method is in compliance with constitutional and statutory provisions of the law and assessments made in accordance therewith will likewise be made as directed by law.

I am sure you and the officers of the various institutions and corporations covered in this instruction will understand that it is not my intention or desire to be harsh or arbitrary in this matter. The explicit and mandatory nature of this instruction is made necessary by reason of constitutional and statutory provisions in order to secure uniformity throughout the State and so that it may not be misunderstood and also because it has been requested by a number of assessors.

I trust that I will have the willing and faithful cooperation of each assessor in this matter so that no further ac-

tion on my part will be necessary to secure compliance with this instruction. I shall be glad to answer any inquiry which you may have in this connection.

Yours very truly,

GEO. P. ALDERSON,

Tax Commissioner.

HJG/AG

page 276] KRUEGER EXHIBIT No. 2

1940

Charleston Building and Loan Association
Charleston, Kanawha County

Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):			
1	Investment Accounts	301,239.00	
2	Investment Shares—Installment	3,730.44	
3	Total privately owned shares (sum of items 1 and 2)		304,969.44
4	Total Government owned shares		0.00
5	Total Free Shares (sum of items 3 and 4)		304,969.44
Other Capital:			
6	Undivided Profits and contingent for contracts	74,543.80	
7	Earned reserves	36,000.00	
8	Total (sum of items 6 and 7)		110,543.80
9	Total Capital (sum of items 5 and 8)		415,513.24

Deductions:			
10	Assessed value of real estate as fixed by the Assessor		39,100.00
11	Net Capital (item 9 less item 10)		376,413.24
12	Assessed value of privately owned shares based on 1939 Act		376,410.00

page 277] KRUEGER EXHIBIT No. 3
1940

Capitol Building and Loan Association
Charleston, Kanawha County

Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):			
1	Full Paid	346,996.22	
2	Installment Stock	20,923.77	
3	Total privately owned shares (sum of items 1 and 2)		367,919.99
4	Total Government owned shares		0.00
5	Total Free Shares (sum of items 3 and 4)		367,919.99
Other Capital:			
6	Undivided Profits	83,270.24	
7	Delinquent Interest	15,325.97	
8	Contingent Fund	18,063.33	
9	Total (sum of items 6 to 8 inclusive)		116,659.54
10	Total Capital (sum of items 5 and 9)		484,579.52

Deductions:		
11 Assessed value of real estate as fixed by the Assessor		11,450.00
12 Net Capital (item 11 deducted from item 9)		473,129.53
Assessed Value of Privately Owned Shares Based on 1939 Act		473,130.00

page 278] KRUEGER EXHIBIT No. 4
1940

Colonial Building and Loan Association
Charleston, Kanawha County

Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):		
1 Capital Stock including Installment Stock	74,896.63	
2 Total privately owned shares		74,896.63
3 Total Government owned shares		0.00
4 Total Free Shares (sum of items 2 and 3)		74,896.63
Other Capital:		
5 Undivided Profits (Deficit)	21,625.26 Cr.	
6 Reserves for Expected Losses:		
7 Real Estate	14,470.66	
8 Conditional Sales	9,799.28	
9 Loans	484.87	

10 Total (sum of items 5 to 9 inclusive)		3,129.55
11 Total Capital (sum of items 4 and 10)		78,026.18
Deductions:		
12 Assessed Value of real estate as fixed by the Assessor		56,700.00
13 Net Capital (item 11 less item 12)		21,326.18
14 Assessed Value of Privately Owned Shares Based on 1929 Act		21,330.00

page 279] KRUEGER EXHIBIT No. 5
1940

Empire Savings and Loan Association
Charleston, Kanawha County

Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):		
1 Full paid	387,600.00	
2 Installment Stock	20,817.83	
3 Total privately owned shares (sum of items 1 and 2)		408,417.83
4 Total Government owned shares		0.00
5 Total Free Shares		408,417.83

Other Capital:		
6 Undivided Profits	55,340.88	
7 Contingent Fund	10,000.00	
8 Dividends Unpaid	9,690.00	
9 Total (sum of items 6 to 8 inclusive)		75,030.88
10 Total Capital (sum of items 5 and 9)		483,448.71
Deductions:		
11 Assessed Value of real estate as fixed by the Assessor		151,950.00
12 Net Capital (item 10 less item 11)		331,498.71
13 Assessed Value of Privately Owned Shares Based on 1939 Act		331,500.00

page 280] KRUEGER EXHIBIT No. 6

1940

Kanawha Savings and Loan Association
Charleston, Kanawha County

Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):		
1 Paid up stock	40,250.00	
2 Matured Stock	62,497.15	
3 Total privately owned shares (sum of items 1 and 2)		102,747.15

4 Total Government owned shares		0.00
5 Total Free Shares (sum of 3 and 4)		102,747.15
Other Capital:		
6 Undivided Profits (deficit)		cr. 21,448.58
7 Total Capital (item 5 less item 6)		81,298.57
Deductions:		
8 Assessed Value of real estate as fixed by the Assessor		38,000.00
9 Net Capital (item 7 less item 8)		43,298.57
10 Assessed Value of Privately Owned Shares Based on 1939 Act		43,300.00

page 281] KRUEGER EXHIBIT No. 7

1940

Liberty Building and Loan Association
Charleston, Kanawha County

Capital Stock or Shares (repurchasable, free or investment shares or accounts purchased as an investment unaccompanied by the securing of a loan):		
1 Full paid Stock		11,190.00
Other Capital:		
2 Real Estate—Contract Reserve	14,738.04	
3 Contingent Fund	8,335.43	
4 Total (sum of items 2 and 3)		23,073.47

5 Total Capital (sum of items 1 and 4)	34,263.47
Deductions:	
6 Assessed Value of real estate as fixed by the Assessor	11,200.00
7 Net Capital (item 5 less item 6)	23,263.47
8 Assessed Value of Privately Owned Shares Based on 1939 Act	23,630.00

page 282] KRUEGER EXHIBIT No. 8

Name Community Savings and Loan Company
Principal Office Charleston
District ..... County Kanawha

Item	Shares Par Value	Shares Number	Shares Amount	Total Amount
1. Common stock paid in		100,000.00		
2. Surplus		72,500.00		
3. Undivided profits		163.06		
4. Interest, commissions, rent, other income earned but not collected and other assets				
5. Earned reserves exclusive of actual expense reserves (itemize)				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				

14.		
15. Total (sum of items 1 to 14 inclusive)		172,663.06
16. Deductions:		
17. Interest accrued on time and savings deposits	995.93	
18. Unearned discount	4,806.81	
19. Interest, commissions, rent, other income collected but not earned and other liabilities		
20. Total (sum of items 17, 18 and 19)		5,802.74
21. Net Worth (item 15 less item 20)		166,860.32
22. Assessed value of real estate owned, as fixed by the Assessor		6,000.00
23. Net value after deduction of assessed value of real estate		160,860.32

Schedule G. Assessed Value on Which Bank is Required to Pay Taxes for the Stockholder:

Class of Stock	Assessed Value
1. Common (item 23 above)	
2. First preferred stock sold to public	
3. Second preferred stock sold to public	
4. Total (sum of items 1, 2 and 3) This amount does not include debentures sold to public Which Are To Be Assessed To The Holders Thereof	

Debentures, Sold to Public, Outstanding as of January 1, 1941.

1. Class "A"
2. Class "B"

Date

List on back representatives present from institution and assessors office.

page 283] KRUEGER EXHIBIT No. 9

Name Industrial Savings and Loan Co.
Principal Office Charleston
District ..... County Kanawha

Item	Shares Par Value	Number	Amount	Total Amount
1. Common stock paid in			25,500.00	
2. Surplus			25,500.00	
3. Undivided profits				
4. Interest, commissions, rent, other income earned but not collected and other assets				
5. Earned reserves exclusive of actual expense reserves (itemize)				
6. Capital earned surplus			640.22	
7. Doubtful notes			6,402.49	
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15. Total (sum of items 1 to 14 inclusive)				58,042.71

16.	Deductions:		
17.	Interest accrued on time and and savings deposits	50.00	
18.	Unearned discount	2,392.00	
19.	Interest, commissions, rent, other income collected but not earned and other liabilities		
20.	Total (sum of items 17, 18 and 19)		2,442.00
21.	Net Worth (item 15 less item 20)		55,600.71
22.	Assessed value of real estate owned, as fixed by the Assessor		0.00
23.	Net value after deduction of assessed value of real estate		55,600.71

Schedule G. Assessed Value on Which Bank is Required to Pay Taxes for the Stockholder:

	Class of Stock	Assessed Value
1.	Common (item 23 above)	55,600
2.	First preferred stock sold to public	
3.	Second preferred stock sold to public	
4.	Total (sum of items 1, 2 and 3) This amount does not include debentures sold to public Which Are To Be Assessed To The Holders Thereof	55,600

Debentures, Sold to Public, Outstanding as of January 1, 1941.

1. Class "A"
2. Class "B"

Date

List on back representatives present from institution and assessors office.

page 284] KRUEGER EXHIBIT No. 10

Name Equity Savings & Loan Company
Principal Office Charleston
District ..... County Kanawha

Item	Shares Par Value	Shares Number	Shares Amount	Total Amount
1. Common stock paid in			100,000.00	
2. Surplus			6,035.44	
3. Undivided profits			5,094.96	
4. Interest, commissions, rent, other income earned but not collected and other assets				
5. Earned reserves exclusive of actual expense reserves (itemize)				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15. Total (sum of items 1 to 14 inclusive)				111,130.40
16. Deductions:				
17. Interest accrued on time and savings deposits				
18. Unearned discount			7,900.00	
19. Interest, commissions, rent, other income collected but not earned and other liabilities				

20. Total (sum of items 17, 18 and 19)	7,900.00
21. Net Worth (item 15 less item 20)	93,230.40
22. Assessed value of real estate owned as fixed by the Assessor	4,150.00
23. Net value after deduction of assessed value of real estate	89,080.40

Schedule G. Assessed Value on Which Bank is Required to Pay Taxes for the Stockholder:

Class of Stock	Assessed Value
1. Common (item 23 above)	89,080
2. First preferred stock sold to public	
3. Second preferred stock sold to public	
4. Total (sum of items 1, 2 and 3) This amount does not include debentures sold to public Which Are To Be Assessed To The Holders Thereof	89,080

Debentures, Sold to Public, Outstanding as of January 1, 1941.

1. Class "A"
2. Class "B"

Date

List on back representatives present from institution and assessors office.

page 285] KRUEGER EXHIBIT No. 11

Name Southeastern Savings and Loan Company
Principal Office Charleston

District ..... County Kanawha

Item	Shares Par Value	Shares Number	Shares Amount	Total Amount
1. Common stock paid in			113,865.00	
2. Surplus			30,860.00	
3. Undivided profits			864.30	
4. Interest, commissions, rent, other income earned but not collected and other assets				
5. Earned reserves exclusive of actual expense reserves (itemize)				
6. Contingent Fund			786.26	
7. Interest and taxes			769.35	
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15. Total (sum of items 1 to 14 inclusive)				147,144.91
16. Deductions:				
17. Interest accrued on time and savings deposits				
18. Unearned discount			2,624.00	
19. Interest, commissions, rent, other income collected but not earned and other liabilities				
20. Total (sum of items 17, 18 and 19)				2,624.00
21. Net Worth (item 15 less item 20)				144,520.91

22. Assessed value of real estate owned, as fixed by the Assessor	0.00
23. Net value after deduction of assessed value of real estate	144,520.91

Schedule G. Assessed Value on Which Bank is Required to Pay Taxes for the Stockholder:

Class of Stock	Assessed Value
1. Common (item 23 above)	144,520
2. First preferred stock sold to public	
3. Second preferred stock sold to public	
4. Total (sum of items 1, 2 and 3) This amount does not include debentures sold to public Which Are To Be Assessed To The Holders Thereof	144,520

Debentures, Sold to Public, Outstanding as of January 1, 1941.

1. Class "A"
2. Class "B"

Date

List on back representatives present from institution and assessors office.

page 286] KRUEGER EXHIBIT No. 12

Name Mutual Savings and Loan Assn.
Principal Office Charleston
District ..... County Kanawha

Item	Shares Par Value	Shares Number	Shares Amount	Total Amount
1. Common stock paid in			24,304.83	
2. Surplus			1,018.71	
3. Undivided profits			2,140.87	
4. Interest, commissions, rent, other income earned but not collected and other assets				
5. Earned reserves exclusive of actual expense reserves (itemize)				
6. Dividends unpaid			300.00	
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15. Total (sum of items 1 to 14 inclusive)				27,764.41
16. Deductions:				
17. Interest accrued on time and savings deposits				
18. Unearned discount			540.96	
19. Interest, commissions, rent, other income collected but not earned and other liabilities				
20. Total (sum of items 17, 18 and 19)				540.96
21. Net Worth (item 15 less item 20)				27,223.45
22. Assessed value of real estate				

owned, as fixed by the Assessor	2,730.00
23. Net value after deduction of assessed value of real estate	24,493.45

Schedule G. Assessed Value on Which Bank is Required to Pay Taxes for the Stockholder:

Class of Stock	Assessed Value
1. Common (item 23 above)	24,490
2. First preferred stock sold to public	
3. Second preferred stock sold to public	
4. Total (sum of items 1, 2 and 3) This amount does not include debentures sold to public Which Are To Be Assessed To The Holders Thereof	24,490

Debentures, Sold to Public, Outstanding as of January 1, 1941.

1. Class "A"
2. Class "B"

Date

List on back representatives present from institution and assessors office.

page 287] KRUEGER EXHIBIT No. 13

Name Liberty Savings and Loan Company
Principal Office Charleston
District ..... County Kanawha

Item	Shares Par Value	Shares Number	Shares Amount	Total Amount
1. Common stock paid in		49,800.00		
2. Surplus and contingent reserve		15,065.08		
3. Undivided profits				
4. Interest, commissions, rent, other income earned but not collected and other assets				
5. Earned reserves exclusive of actual expense reserves (itemize)				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15. Total (sum of items 1 to 14 inclusive)				64,865.08
16. Deductions:				
17. Interest accrued on time and savings deposits				
18. Unearned discount		55.00		
19. Interest, commissions, rent, other income collected but not earned and other liabilities				
20. Total (sum of items 17, 18 and 19)				55.00
21. Net Worth (item 15 less item 20)				64,810.08
22. Assessed value of real estate				

owned, as fixed by the Assessor	33,240.00
23. Net value after deduction of assessed value of real estate	31,570.08

Schedule G. Assessed Value on Which Bank is Required to Pay Taxes for the Stockholder:

Class of Stock	Assessed Value
1. Common (item 23 above)	31,570.00
2. First preferred stock sold to public	
3. Second preferred stock sold to public	
4. Total (sum of items 1, 2 and 3) This amount does not include debentures sold to public Which Are To Be Assessed To The Holders Thereof	31,570.00

Debentures, Sold to Public, Outstanding as of January 1, 1941.

1. Class "A"
2. Class "B"

Date

List on back representatives present from institution and assessors office.

page 288] VAN VERTH EXHIBIT No. 1

Sales of Adjacent Lands

Owner .....
Operating Co. .....
District .....
Zone No. .....
Map No. .....
Val. Sec. No. .....

State West Virginia County Kanawha Municipality Dunbar

Deed ..... Book 425 Page 214 Cons.
Date of Deed July 13, 1936
Recited $650.00
Revenue Stamps $1.00
Actual .....
Est. Value of Improvements $ .....
Indicated Land Value $ .....
Grantor Floyd A. Ramsey to
Grantee Adda B. Hall
Area ..... Sq. Ft.
..... Acres.
Unit ..... Sq. Ft.
..... Acre.
Description and dimensions
Lot 44, Block "B" Dunbar Avenue, City of Dunbar

Assessment	
1937	$600.
1938	600.
1939	600.
1940	600.

Was sale made under normal conditions:
Representative of values in vicinity
Actual consideration furnished by
Analysis (include treatment of improvements, if any: assessment information and report of facts)
The 1940 Assessment is 92% of the Purchase Price.

page 289] VAN VERTH EXHIBIT No. 2

Sales of Adjacent Lands

Owner .....
Operating Co. .....
District Poca
Zone No. .....
Map No. .....

Val. Sec. No.
State County Municipality

Deed Book 389, Page 9 Cons.—& 1932-1933 taxes.
Date of Deed July 7, 1933
Recited $1200.00
Actual Rev. $1.50
Est. Value of Improvements $
Indicated Land Value $
Grantor O. E. Bailey & Clyde D. Bailey to
Grantee V. C. Tate
Area Sq. Ft.
Acres.
Unit Sq. Ft.
Acre.

Description and dimensions 42 Acres and 48 acres and 44.5 acres
Assessed in two tracts one of 90 Acres and 44.5 Acres

	Assessment
1934	$1500.
1935	1500.
1936	1500.
1937	1600.
1938	1600.
1939	1550.
1940	1550.

Was sale made under normal conditions:
Representative of values in vicinity
Actual consideration furnished by
Analysis (include treatment of improvements, if any; assessment information and report of facts)
The 1940 Assessment is 129% of the purchase price

page 290] VAN VERTH EXHIBIT No. 3

Sales of Adjacent Lands

Owner
Operating Co.

District .....
Zone No. .....
Map No. .....
Val. Sec. No. .....

State West Virginia County Kanawha Municipality Charleston

Deed ..... Book 562 Page 449 Cons.
Deed dated Jan 1, 1941
Verified with Harry Porter, Atty.
Recited .....
Actual $23,750.00
Est. Value of Improvements $ .....
Indicated Land Value $ .....
Grantor Wm. G. Caperton, et al to
Grantee Modern Homes, Inc.

Area ..... Sq. Ft.
..... Acres.
Unit ..... Sq. Ft.
..... Acre.

Description and dimensions Lot 100 ft on Kanawha St. 100 x 185 1424 Kanawha St.

Assessment	
1939	$33,000.
1940	33,000.

Was sale made under normal conditions: .....
Representative of values in vicinity .....
Actual consideration furnished by .....
Analysis (include treatment of improvements, if any; assessment information and report of facts)
The 1940 Assessment is 139% of the Purchase Price

page 291] VAN VERTH EXHIBIT No. 4

Sales of Adjacent Lands

Owner .....

Operating Co. .....
District .....
Zone No. .....
Map No. .....
Val. Sec. No. .....

State ..... County ..... Municipality Charleston
Deed ..... Book 569 Page 141 Cons.
3-6-41

Recited .....
Rev. 26.40
Actual 23,000.
Est. Value of Improvements $ .....
Indicated Land Value $ .....

Area ..... Sq. Ft.
..... Acres.
Unit ..... Sq. Ft.
..... Acre.

Grantor Chase, Sallie, L. D. & C. R. to
Grantee Isabelle Levi
Description and dimensions Lots 15—pt. 16—17 Blk A
Ruffner Bros. Addn.
1579 Va. St.
1940 24,500
Was sale made under normal conditions: .....
Representative of values in vicinity .....
Actual consideration furnished by .....
Analysis (include treatment of improvements, if any; assessment information and report of facts)
106%

page 292] VAN VERTH EXHIBIT No. 5

State of West Virginia

S. T. C. O. Form No. 3-C
Revised September, 1940
(Supplement to Forms Numbers One, Two and Three)

.....District .....County

Balance Sheet for Corporations, Firms, Partnerships or Individuals

(This Form must be filed as a supporting detail to S. T. C. O. Forms Nos. 1, 2 and 3 when such data is requested by the Assessor)

For (Name) .....

(Address) .....

Instructions

In making up this balance sheet of your business, it will be necessary to use true and correct figures from your record, that they may be verified by your record when audited by the proper authority.

All inventories are to be based upon actual market cost prices as of the first day of the year for which this return is made.

Separate balance sheets shall be prepared for each operating business or plant. In the case of coal operations a separate balance sheet shall be furnished for each mine and each store.

This Return should be filed with the County Assessor as soon as possible after the first day of January.

If the space on blank is not sufficient to make full and complete return of any property, use additional sheet of paper and attach hereto.

Failure to List Property, Make Oath or Answer: Proceedings on Default

Code of West Virginia (1931), Chapter 11, Article 3, Section 10, as amended by Chapter 37, Acts of the Legislature, Regular Session, 1933, and as amended by Chapter 113, Acts of the Legislature, Regular Session, 1937.

"If any person, firm or corporation, including public service corporations whose duty it is by law to list any real estate or personal property for taxation, shall refuse to fur-

nish a proper list thereof or refuse to furnish a list within the time required by law, or to make such oath as required by this chapter; or if any person, firm or corporation, including public service corporations, shall refuse to answer or shall answer falsely any question asked by the assessor or by the tax commissioner, or shall fail or refuse to deliver any statement required by law, he or it shall forfeit not less than twenty-five nor more than one hundred dollars, and shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the board of public works. If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether such return is to be made to the assessor, the board of public works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, including money, notes, bonds, bills and accounts receivable, stocks and any other intangible personal property, such person, firm or corporation, in addition to all other penalties provided by law, shall forfeit five per cent of the value of the property not returned and not otherwise taxed in this state."

page 293] Form No. 3-C

Corporation Balance Sheet

For (Name) Address Year Ended December 31, 1940 Or , 194 (Fiscal Year)

Assets	Book Value	Valued by Company	Valued by Assessor
1 Money—Credits and Investments			
2 Deposits in West Virginia Banks			
3 Deposits in Banks Outside West Virginia			

4 Cash on Hand
5 Deposits—Checks—Credits, etc., Elsewhere
6 Accounts Receivable
7 Less Reserve.....%.....
8 Notes Receivable
9 Less Reserve.....%.....
10 Interest

---

11 Bank Accounts Receivable
12 Notes, Bills, and Other
13 Investments

---

14 Industrial Bonds, etc.
15 Government Bonds, etc.
16 Other Bonds
17 Debentures
18 Notes, Liens, Mortgages, Chattels, etc.
19 Industrial Stocks
20 Other Non-Taxable Items (List)
21 Deferred—Charges

---

22 Prepaid—Insurance and Taxes
23 Prepaid—Interest and Other Items
24 Unamortized Items
25 Patents, Good Will, etc.

---

26 Total—Taxable Items (Class 1)

---

27 Total—Non-Taxable Items

28
29 Capital Assets

---

30 Real Estate
31 Land
32 Buildings

33 Total
34 Less Depreciation.....%.....
35 Total Real Estate (Classes III and IV)

36
37 Machinery and Equipment

---

38 Less Depreciation.....%.....
39 Total Machinery and Equipment
40 Delivery Equipment

---

41 Autos: No..... Make..... Yr.....
42 Trucks: No..... Make..... Yr.....
43 Others: No..... Kind..... Size.....
44 Total Delivery Equipment

---

45 Less Depreciation.....%.....
46 Net Delivery Equipment (Classes III and IV)

---

47 Store & Office Furniture and Fixtures in this County
48 Store & Office Furniture and Fixtures Elsewhere
49 Inventories:

---

50 Manufacturing or Refining
51 Raw Materials
52 Work in Process (Incl. Mat. Lab. & Exp.)
53 Finished Goods (Incl. Mat. Lab. & Exp.)
54 Stored in This County
55 Stored in Other Counties, etc.
56 Supplies
57 Merchandising—Mining and Others

---

58 Goods Held for Sale
59 Supplies
60 Consigned Goods $.....
61 Other

page 294] Form No. 3-C

Corporation Balance Sheet

For (Name)..... Address..... Year Ended December 31, 1940..... Or....., 194..... (Fiscal Year)

	Assets	Book Value	Valued by Company	Valued by Assessor
62	Total Inventories			
63	Less Depreciation and Shrinkage			
64	Net Inventories (Classes III and IV)			
65				
66	Total Tangible Property (39-46-47-48-64)			
67				
68	Total All Assets (26-27-35-66)			
69				
70				
71	Liabilities			
72				
73	Notes Payable			
74	Accounts Payable			
75	Bonds and Mortgages			
76	Accrued Expenses			
77	Interest			
78	Taxes			
79	Insurance			
80	Other			
81	Other Liabilities (Describe)			
82				
83	Capital Stock			

84 Preferred (Outstanding)
85 Common (Outstanding)
86 Special (Outstanding)
87
88
89 Surplus
90 Undivided Profits
91
92 Total Liabilities

Oath: I swear/affirm that the foregoing balance sheet has been examined by me, and to the best of my knowledge and belief, it contains a full and correct copy of the balance sheet figures for the year stated as reported by the Corporation herein named, and does agree with the books and accounts of said Corporation.

.....

Subscribed and sworn to before me by .....,
this the ..... day of ....., 19 ....

.....

.....

page 295] (And at another day, to-wit: At a Circuit Court for Kanawha County held at the Court House thereof on the 23rd day of December, 1941)

George P. Alderson, State Tax Commissioner,
vs.) Appeal
County Court of Kanawha County sitting as a Board of Equalization and Review.

In the Matter of Tax Assessments Against

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, Empire Savings & Loan Company and Capitol Building & Loan Association.

This cause came on to be heard upon the petition of George P. Alderson, State Tax Commissioner of the State of West Virginia, praying for an appeal from the order and finding of the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization in and for Kanawha County, West Virginia, herein referred to as Board of Review and Equalization, reducing the valuations, respectively, fixed upon the properties of Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, by the Assessor of Kanawha County, West Virginia, the said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association being represented by their counsel, Koontz & Koontz and W. Elliott Nefflen, and said Empire Savings & Loan Company, by its counsel, James Kay Thomas, and the Capitol Building & Loan Association by its counsel, Koontz & Koontz and W. Elliott Neffln, and the said George P. Alderson, State Tax Commissioner as aforesaid, being represented by his counsel, W. Holt Wooddell, Assistant Attorney General of West Virginia, and Howard J. Gibson; and upon the evidence, exhibits, records and papers taken and filed in the proceedings before the Board

page 296] of Review and Equalization in and for Kanawha County, West Virginia, as certified by said Board.

Thereupon, by agreement between said Howard J. Gibson, counsel for the State Tax Commissioner as aforesaid,

James Kay Thomas, counsel for the Empire Savings & Loan Association, and W. Elliott Nefflen, of counsel for the Capitol Building & Loan Association, the appeal as to Empire Savings & Loan Company and the Capitol Building & Loan Association, and the matters of law and fact arising thereon, are held in abeyance in status quo, on the open docket, and this cause came on to be heard only as to the said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, upon the matters of law and fact arising upon the record and upon the evidence and exhibits so certified by said Board of Review and Equalization in and for the said County of Kanawha, and was duly argued by counsel for the appellant, said George P. Alderson, State Tax Commissioner as aforesaid, and counsel for the respondents, said four associations last named and mentioned. Upon consideration of the evidence, exhibits and records so certified by the said Board of Review and Equalization, in and for Kanawha County, West Virginia, and of the arguments of counsel thereon, the Court is of the opinion to and doth find that the action of the said Board of Review and Equalization in and for the said Kanawha County in reducing the valuations, respectively, of the properties of the Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, be and the same is hereby reversed, and it is adjudged, ordered and decreed that the assessments of the valuations of the properties of said four associations be and the same hereby are restored to the amounts fixed by the Assessor of said Kanawha County, as directed to be made

page 297] by the said Tax Commissioner, said assessments being the true and actual values of the respective properties of the four associations, respectively, as of January 1, 1941, as follows, to-wit:

Charleston Federal Savings & Loan Association	$921,180.00
First Federal Savings & Loan Association	249,080.00
West Virginia Building & Loan Association	69,490.00
Empire Federal Savings & Loan Association	273,880.00

these being the amounts fixed and determined by the said Tax Commissioner, and at his direction placed by the Assessor of Kanawha County, West Virginia, upon the property books for assessment purposes in and for the said County of Kanawha, State of West Virginia, for the tax year commencing January 1, 1941; and the opinion of this Court in so finding and in reversing the action of the said Board of Review and Equalization in and for said Kanawha County, is as follows:

"Following the decision of the Supreme Court of Appeals in the case of Charleston Federal Savings and Loan Association, et al. v. James, 120 W. Va. 781, the Legislature by Chapter 118 of the Acts of 1939, added a new section, 14-A, to Article 3 of Chapter 11 of the Code, providing expressly for the assessment of building and loan associations.

"The State Tax Commissioner evolved a formula for the assessment of such bodies, the expressed intent of such being to 'produce uniform and equal assessment and taxation of the properties of all such institutions and corporations throughout the state.' It is axiomatic that the Courts pay great respect to the construction by administrative agencies of the state to statutes coming within the purview of their functions. In the words of the minority opinion in the case of Loan Association v. James, 'Years of administrative acquiescence and effectuation' should not be supplanted by some other theory. We have here a situation of 'administrative effectuation' of a new statute by the state agency

charged with its enforcement, and unless the same is shown to be conclusively arbitrary and wholly wrong in theory, it will not be disturbed; and upon the record here I cannot find such to be the case.

"The burden of appellee's argument seems to be discrimination because of the fact that the assesser of Kanawha County assesses other species of property in Class I upon a different basis. As I view it, such argument would be tenable only in the event there was a different assessment of other properties of a like character, in this instance building and loan associations. The fact that live stock, personal property of other genus and real es-

page 298] tate may be assessed upon a certain percentage of its estimated true and actual value, is not in my opinion discriminatory so long as all building and loan associations or institutions of like character are assessed upon a uniform basis.

"The Courts have taken judicial notice of the long continued practice of assessors throughout the state to assess property, real and personal, at less than its true and actual value, varying in the different counties. If it be the policy of the state throughout its authorized officials to abandon this method of assessment and give literal application to the meaning of the terms 'true and actual value,' who is to gainsay them?

"For the reasons herein briefly outlined, the action of the County Court of Kanawha County sitting as a Board of Review and Equalization in assessing the properties of the appellees will be reversed and the assessment restored to that directed to be made by the State Tax Commissioner."

It is further adjudged, ordered and decreed that the costs of this appeal be charged to the said four associations last above named.

Thereupon, the said four associations, namely, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan

Association, and Empire Federal Savings & Loan Association, jointly and severally, objected and excepted to the opinion, finding, ruling and judgment of the Court, the grounds of their objects and exceptions being:

First: That the finding and judgment of the Court are contrary to the law and the evidence;

Second: That the Court erred in finding that the valuations, as determined by the State Tax Commissioner, are the true and actual values, that the valuation of the property of the Charleston Federal Savings & Loan Association, is the sum of $921,180.00; First Federal Savings and Loan Association, the sum of $249,080.00; West Virginia Building & Loan Association, the sum of $69,490.00; and Empire Federal Savings & Loan Association, the sum of $273,880.00. Such valuations of the properties of said four associations, respectively, as being the true and actual values thereof, respectively, are contrary to the evidence.

Third: That the Court erred in finding that, page 299] although other personal property placed in Classification I, as provided by Section 1, Article X, of the Constitution of West Virginia (that being the same class in which the properties of building and loan and savings and loan associations are placed for taxation purposes) may be assessed at a lower valuation than the true and actual value, namely, upon a certain percentage of the true and actual value thereof, such fact is not discriminatory against these said four associations. Such finding and judgment of the Court are in violation of and contrary to the provisions of Section 1, of the Fourteenth Amendment to the Constitution of the United States of America, and also the provisions of Section 1, Article X, of the Constitution of West Virginia, in that said four associations are not accorded the equal protection of the laws, are discriminated against in favor of other taxpayers owning property placed in Classification I as provided by Section 1, Article X, of the Constitution of West Virginia, and are unequally burdened, and, therefore, their properties are not uniformly taxed

along with other properties in Classification I or with properties placed in the other classifications, namely, Classification II, Classification III and Classification IV.

The said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, having indicated their desire to apply to the Supreme Court of Appeals of West Virginia for an appeal from, and writ of error, and supersedeas to, said judgment and decree, on their motion by their counsel, the effect of this decree and order is suspended for a period of ninety days from this date upon the said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, or any one of them, or someone for them, entering into a bond before the Clerk of this Court, with sureties approved by the Clerk of this Court, in the penalty of

page 300] $100.00, in the form and upon the conditions prescribed by law.

page 301] State of West Virginia,
County of Kanawha, to-wit:

I, M. H. Hix, Clerk of the Circuit Court for said County, State aforesaid, do hereby certify that the foregoing is a true, full and complete transcript in the case of George P. Alderson vs. County Court of Kanawha County sitting as a Board of Equalization and Review.

Given under my hand and the seal of said Court this 11th day of June, 1943.

M. H. HIX,
Clerk, Circuit Court, Kanawha
County, West Virginia.

(Seal, Circuit Court, Kanawha County, West Virginia.)

Printed June 28, 1943.
Cost of Printing, $254.40.

[fol. 312] IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

ORDERS OF CONTINUANCE

At another day, to-wit, on the 17th day of September, 1943, the following order was made and entered, to-wit:

For reasons appearing to the Court and by agreement of counsel this cause is continued until the first day of the January, 1944 term.

At another day, to-wit, on the 12th day of October, 1943, the following order was made and entered, to-wit:

Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced in this cause on the 23rd day of December, 1941.

For reasons appearing to the Court and by agreement of counsel this cause is continued generally.

At another day, to-wit, on the 10th day of January, 1944, the following order was made and entered, to-wit:

Upon an appeal to a decree of the Circuit Court of Kanawha County, pronounced in this cause on the 23rd day of December, 1941.

For reasons appearing to the Court and by agreement of counsel this cause is continued to Tuesday, January 18, 1944.

[fol. 313] IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

ORDER OF SUBMISSION—January 19, 1944

Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced in this cause on the 23rd day of December, 1941.

This day came the appellants, Charleston Federal Savings & Loan Association, W. Va. Building & Loan Association, and Empire Federal Savings & Loan Association, by Koontz & Koontz, W. Eliott Nefflen, and Harry B. Lambert, their attorneys, and the appellee, Honorable George P.

Alderson, State Tax Commissioner, by Hon. Ira J. Partlow, Acting Attorney General, and Hon. Kenneth E. Hines, Assistant Attorney General, his attorneys, and this cause was fully heard upon the transcript of the record herein and the argument of counsel thereon, and is submitted for decision.

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

JUDGMENT—February 22, 1944

Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced on the 23rd day of December, 1941.

The Court, having maturely considered the transcript of the record herein and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is no error in the decree complained of. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 23rd day of December, 1941, be, and the same is hereby affirmed, and that the appellants [fol. 314] do pay unto the appellee thirty dollars damages and his costs about his defense in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The syllabus of points adjudicated, prefixed to the written opinion prepared by Judge Fox, was concurred in by Judges Rose, Kenna, Riley and Lovins.

[fol. 315] [File endorsement omitted]

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 9501

In Re: TAX ASSESSMENTS

Against

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, West Virginia Building and Loan Association and Empire Federal Savings & Loan Association.

Kanawha County, Affirmed.

Fox, Judge:

1. "The legislature has power to prescribe the method by which the valuation of any class of property may be ascertained, and, where the value of the same class of property is ascertained throughout the state in the same manner, such valuation can not be regarded as unconstitutional for lack of uniformity or equality." *Charleston & Southside Bridge Co.* v. *County Court*, 41 W. Va. 658, Pt. 2, Syl.

2. Under Section 1, Article X of the Constitution of West Virginia, the legislature has power to direct by law the method of assessment of all classes and types of property, and to apply different methods to different types of property, even though included in the same constitutional classification as respects the rate of levies which may be laid thereon.

[fol. 316] 3. To entitle a complaining taxpayer to relief under the "equal and uniform" provision of Section 1, Article X of the Constitution of West Virginia, there must be a clear showing of discrimination against him in the assessment of the same type of property. Such discrimination is not established where the showing is only that other property of a different type is assessed at less than its apparent or face value, through a process of estimation, and in a good faith effort to arrive at the true and actual value thereof.

[fol. 317] OPINION—Filed February 22, 1944

Fox, Judge:

The appellants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, complain of a final order of the Circuit Court of Kanawha County, entered on the 23rd day of December, 1941, fixing the 1941 assessment for tax purposes of the intangible property owned by them, respectively. Their appeal is prosecuted under the provisions of Code, 11-3-25, as amended by Chapter 41, Acts of the Legislature, Regular Session, 1933.

The Assessor of Kanawha County, following instructions of the State Tax Commissioner, made the following assessments of the intangible property of the appellants, taxable in said county, for the year 1941: Charleston Federal Savings & Loan Association, $921,180; First Federal Savings & Loan Association, $249,080; West Virginia Building & Loan Association, $69,490; and Empire Federal Savings & Loan Association, $273,880. On protest filed before the county court of said county, acting as a Board of Review and Equalization, under the provisions of Article 3, Chapter 41, Acts Regular Session, 1933, a hearing was had before said board, which resulted in an order reducing said assessments approximately thirty per cent, and they were fixed as follows: Charleston Federal Savings & Loan Association, $639,030; First Federal Savings & Loan Association, $170,450; West Virginia Building & Loan Association, $48,230; and Empire Federal Savings & Loan Association, $189,600. These reductions appear to have been made solely on the theory that other property of the same class, in the same taxing district, was assessed at approximately [fol. 318] seventy per cent of its true and actual value, and that the assessments made by the assessor discriminated against protestants. No contention has ever been made that the assessments of the property of the appellants, made by the assessor, were in excess of the true and actual value thereof.

The State Tax Commissioner prosecuted an appeal from the action of the Board of Review and Equalization to the Circuit Court of Kanawha County, and, on December 23, 1941, that court entered an order reversing the action

of said board and fixing the assessments in question at the same amounts as those originally made by the assessor, from which action of the circuit court we granted this appeal.

The property of the appellants, the assessment of which is here involved is Class I property, as defined by Article 8 of Chapter 38, Acts Regular Session, 1933, and carries an initial tax rate of fifty cents on each one hundred dollars valuation. This statutory classification was made under Section 1, Article X of our Constitution, the pertinent provisions of which are:

> "Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of propety of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon * * *."

[fol. 319] In connection with the constitutional provision quoted above, it is well to keep in mind the general provisions of our statute, Code, 11-3-1, relating to the assessment of property of all classes. These are:

> "All property shall be assessed annually as of the first day of January at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, * * *."

Questions affecting the assessment of the property of building and loan associations have received the atten-

tion of the courts and the legislature in recent years. Prior to the adoption of the tax limitation amendment, (Section 1 of Article X of the Constitution) and enabling statutes enacted thereunder, the property of building and loan associations was not assessed for tax purposes to the association itself, but investments therein were assessed to individual firm or corporate stockholders, following the decision of this Court in *Ohio Building and Loan Company* v. *County Court*, 42 W. Va. 818, 26 S. E. 203. However, in the later case of *Charleston Federal Building & Loan Association* v. *James*, 120 W. Va. 781, 200 S. E. 845, decided on December 8, 1938, it was held that, "Both state and federal building and loan associations are incorporated companies within the meaning of Code, 11-3-12, and are corporations within the meaning of Code, 11-3-13. Therefore, their intangible and other personal property is subject to taxation." [fol. 320] The legislature convened in regular session in January, 1939, and was charged with knowledge of the case last cited above when it enacted Chapter 118 of the Acts of that session, now carried in Michie's Code, 1943, as Section 14a, Article 3, Chapter 11. That section is a comprehensive one, and covers in detail all phases of the assessment of the property of building and loan and federal savings and loan associations. We note the first paragraph of the section, which reads as follows:

> "The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such invest-

ment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources."

Paragraphs 2 and 3 of the section go into further detail as to the duties of the officials of such associations, the assessment of its real estate, and other details not necessary to consider here.

We do not understand that appellants question either the intent or the power of the legislature to fix the methods of assessment of the particular type of property owned by building and loan and federal savings and loan associa-[fol. 321] tions. The power of the Legislature to enact such a statute seems clear, and has been exercised in a number of instances. For example, Code, 11-6, as amended, covers the assessment of the property of public service corporations; Code, 11-3-12 and 13, prescribes how the property of other corporations shall be assessed; Section 14 of the same article, as amended by Chapter 40, Acts Regular Session, 1933, provides for the assessment of the property of banking institutions; Section 15, as amended by Chapter 40, Acts Regular Session, 1933, covers the assessment of the property used in trade or business by natural persons. Therefore, when the legislature enacted Chapter 118 of the Acts of 1939, it only added to existing statutes covering the assessment of various types of property, and created no innovation on former practices. Even if it had done so, Section 1, Article X of the Constitution gives the legislature power to direct how the value of any class of property shall be ascertained, and this power has been expressly upheld by this Court in *Charleston & Southside Bridge Co. v. Kanawha County Court*, 41 W. Va. 658, 24 S. E. 1002.

But we do not understand the appellants to contend that, admitting the power and efficacy of the legislative enactment of 1939, the same cannot be administered as directed, where to do so would discriminate against owners of other property of the same class in the same taxing district. This in reality is the paramount question presented on this appeal.

Appellants have produced testimony tending to show that other classes of property, such as real estate, oil and gas properties, automobiles and household goods are as-[fol. 322] sessed at less than their true and actual value in

Kanawha County. We think this testimony must be disregarded. The "equal and uniform" provision of our Constitution "means merely that as to classes of property, business or income there shall be uniformity of taxation." *Christopher* v. *James*, 122 W. Va. 665, 12 S. E. 2d 813, 816. See also *Charleston & Southside Bridge Co.* v. *County Court, supra;* In re *Hancock County Federal Savings & Loan Association*, 125 W. Va. ——, 25 S. E. 2d 543. But they also introduce evidence which shows the manner in which intangible personal property such as notes, accounts and certain types of bonds, as well as other types of Class I property are assessed. It is important at this point to ascertain just how these assessments are made, and, fortunately, we have the testimony of the chief deputy of the Assessor of Kanawha County, whose statement is clear and explicit as to the methods of assessment followed. After stating that live stock, property employed in and products of agriculture, money, notes, accounts receivable, and bonds other than government, state and municipal, and shares of building and loan associations are treated as Class I property, his examination follows:

"Q. In issuing your instructions to your field deputies will you state how you instruct them to value the various types of property which you state are in Class 1? What method or plan is used?

"A. Money is valued, of course, at 100%; accounts receivable are valued at about 70% unless they are installment accounts, and they are valued at approximately 65%.

"Q. You mean installment accounts are valued at 65%?

"A. Yes.

"Q. You mean 65% of their book value or the value shown on the face?

[fol. 323] "A. Yes, the book values shown on the face of them.

"Q. How about other personal property such as livestock and agricultural products?

"A. Livestock is valued *as* approximately 50% of the purchase value.

"Q. How do you ascertain that purchase value in your instructions to your field deputies?

"A. By asking the farmer what he paid for a plow or cattle *of* livestock, and also using their own judgment.

"Q. How about notes?

"A. Notes are assessed at approximately 70%.

"Q. How about bonds?

"A. Bonds are assessed at approximately 70% unless their market value is less. Then, of course, if the market value of bonds is less than 70% we generally factor them slightly under their market value.

"Q. But generally you take 70% of the face value?

"A. That is the usual general procedure, yes, sir.

"Q. Is that same system used throughout Kanawha County in all its magisterial districts by all of your field deputies?

"A. Yes, sir.

"Q. Is that done under your supervision?

"A. Yes, sir.

"Q. From whom do you receive your instructions?

"A. From Mr. Abbot, the Assessor of Kanawha County."

There is also testimony showing that the assets of certain loan companies, shown by the record to be commonly called "Small Loan Companies", as distinguished from commercial banks and trust companies are assessed at figures running from eighty-five to eighty-eight per cent of their face value. There is no showing as to the method employed in the assessment of the assets of trust companies and commercial banks, and we assume such assessments are made as directed by Code, 11-3-14, as amended [fol. 324] by Chapter 40, Acts Regular Session, 1933. The testimony shows that the assessor in fixing the value of Class I property, employed a uniform and systematic plan as to the different types of property included in the general Class I classification. Therefore, no question of error of judgment is involved. What the assessor did was intentional and followed a preconcerted plan, and, this being true, is discrimination against the appellants clearly shown? Money is assessed at its face value, as are the assets of commercial banks, and as to them it cannot be claimed there is any discrimination one over the other, or against the appellants. It may be claimed that the method employed in the assessment of loan companies is discriminatory, but

to sustain that claim appellants would have to concede that the securities held by such loan companies are of the same type, and as well secured as their own. That loan companies of the class mentioned are engaged in a business different from, and involving greater risk than that in which building and loan and federal savings and loan associations are engaged is well known and will not, we think, be disputed. We run into a situation impossible of solution when we attempt to make any comparison as between the assessments of live stock, agricultural equipment and farm products on the one hand, and secured assets of a bank or building and loan association on the other. When we come to assessment of notes and accounts, we think it clear, from the testimony of the deputy assessor, that what is done is assess them at sixty-five to seventy per cent of their [fol. 325] face value as reported to the assessor. Bonds are assessed at seventy per cent of their face value, unless their market value is less, and then at a figure slightly under their market value. In view of all this, can it be said that there has been such discrimination as justifies the complaint of the appellants.

That the assets of the appellants are made up of high-grade securities will not be denied. There is and can be no reasonable doubt as to their being worth one hundred per cent of their face value. No one can question values based on securities of the Government of the United States. When we come to their chief business, that of lending money on real estate, we must consider that every loan is made upon fair appraisement of real estate; the loans are confined to a percentage of the appraised value of such real estate, in order to guard against fluctuation in value; the property on which the loans are made is insured against destruction by fire and otherwise, and, generally, every possible step taken to secure the solvency of every dollar of such assets. In addition their business is subject to the rigid and constant supervision of the State or Federal Government, or both, and their solvency at all times is a mandatory requirement for doing business. Such a class of assets is, of course, clearly distinguishable from the ordinary run of notes and accounts. Of course, notes held by individuals, firms and corporations are, sometimes, equally well secured; but when we treat them as a class such statement does not hold good.

[fol. 326] While our State Constitution requires uniformity and equality in taxation, no one has ever believed that either could be attained as a practical matter. The constitutional provision is a statement of an ideal, and is implemented by numerous statutes, all seeking to put into practice such ideal so far as is humanly possible. But do all we can, and attempt as rigidly as we may to enforce such statutes, we will fall far short of attaining equality, uniformity and justice in levying taxes. In the first place assessors often deliberately fail to perform their full duty; but their most sincere effort to perform such duty would not result in an assessment fair to everyone. For example, who can know the exact value of an oil or gas well; or, to confine ourselves to Class I property, the value of a herd of cattle, or a flock of sheep, or agricultural implements; or how much will be realized from the notes and accounts of any business or individual. No one can escape the variations of financial fortune, and as to every note and account there is some risk. Then, delays in and costs of collection must be considered. No one can fix with certainty the real value of the great mass of property of all types and classes, and a certain amount of estimate and conjecture is inevitable.

In these circumstances assessors are warranted in adopting some reasonable plan for the valuation of types of property, the value of which may be affected by the considerations above mentioned. As to notes and accounts, assessors do not have the facilities to investigate the financial standing of debtors, and if they had, perfection [fol. 327] could not be attained. They are driven to adopt some standard, and if they do so, and it is a reasonable one, the results of its application cannot be considered as a discrimination against owners of other property, the value of which can be more definitely determined, and is largely fixed by its very nature. The results may not be entirely fair to other taxpayers. In many instances notes and accounts worth full value may be assessed at less than their value and, in individual cases, a clear case of discrimination may be shown to exist. But this does not rise to the importance of general discrimination as between property of different types, even that within the same legal classification. It must be agreed that every effort should be made to avoid such instances of discrimination, and the use of

the plan adopted by the Assessor of Kanawha County, and other assessors throughout the State, should be limited to cases where no better plan can be devised. Every assessor should feel the obligation to prevent discrimination between taxpayers to the fullest extent possible.

On the record before us, we do not believe a clear case of discrimination has been shown. No one contends that the property of the appellants has been assessed in excess of its true and actual value. Appellants would not be permitted to do business if their respective assets were less in value than that reported to the assessor. State and Federal authorities would intervene, if such a situation existed. As has been stated above, the assets of each of the appellants were originally selected after the most rigid test as to its value, and care taken to guard against the fluctuation [fol. 328] in values of properties securing such assets. Clearly, as relates to safety and security it is a different type of property from the ordinary note or account. Why, therefore, should we be asked to reduce an assessment below its true value, merely because as to other property, the value of which is uncertain, and by reason of its character cannot be accurately determined, assessing officers have, in good faith, adopted a plan for arriving at an estimated value?

Then, what evidence is there in the record that Class I intangible property, not covered by the type of property owned by the appellants, is assessed at less than its true value. Of course, appellants cannot, on account of practical difficulties, show that it is assessed at less than its value, and, for the same reason, the assessor cannot show the opposite. Neither the assessor nor the appellants know, or can by any reasonable effort ascertain, the true and actual value of the intangible Class I property in Kanawha County, represented by the common run of notes and accounts. If this be true, how can it be claimed that any discrimination was practiced. We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value. The more or less ar*ib*trary allowance of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. We think it was. Some plan which would take into

account the difference between the secured notes and unsecured notes and accounts could, and should be devised; but mere error of judgment as to the plan adopted is not [fol. 329] sufficient to establish discrimination, where the plan, though imperfect, is adopted in a good faith effort to secure fair and equitable assessment, and equality and uniformity in taxation.

Recent radical changes in our tax system, brought about by the adoption of the tax limitation amendment, Section 1 of Article X of our Constitution, whereby property is classified, gives rise to the suggestion that once property has been classified, there can be no further distinction as to property within a given classification. Whether there can be such distinction is perhaps dependent on the character of the property involved. Each of the four classifications of property for tax purposes includes property of different types, for the ascertainment of the value of which different methods are employed. In the very nature of things this must be true. The Constitution plainly says that the value of all property for tax purposes shall be ascertained "as directed by law." Who gives the direction? Obviously, the sole law-making authority, the legislature. In respect to building and loan and federal savings and loan associations, as well as other types of property, the legislature has given specific direction, and as to other types of property the directions are more general. We do not doubt the inherent and constitutional power of the legislature to give these directions, so long as they are designed to provide a method in keeping with the aim to tax property equally and uniformly, as required by our Constitution. So far as concerns our State Constitution, we think the question is set at rest by the decision of this Court in *Charleston & Southside Bridge Co.* v. *Kanawha County Court*, *supra*. That case was decided in 1896, when there [fol. 330] was no classification of property for tax purposes, and uniform tax rates, in each taxing district, applied to all property. However, Section 1 of Article X of the Constitution, as it then was, contained the same provisions with respect to equality and uniformity as those contained in the present Constitution. In that case the plaintiff was the owner of a toll bridge, and the legislature had provided a particular method for the assessment of toll

bridges and ferries. Points 2, 3 and 4 of the syllabus read as follows:

> "2. The legislature has power to prescribe the method by which the valuation of any class of property may be ascertained, and, where the value of the same class of property is ascertained throughout the state in the same manner, such valuation can not be regarded as unconstitutional for lack of uniformity or equality.
>
> "3. The Constitution prescribes what property is to be taxed, and the legislature prescribes the manner in which it shall be taxed, which mode of taxation shall be equal and uniform as to all classes of property.
>
> "4. A tax upon all business of the same class, which is uniform as to that kind of business, is not unconstitutional."

We know of no subsequent case which in any way departs from that decision. It was cited with approval in *Christopher* v. *James, supra.* The later classification of property does not, in our opinion, call for any departure from the principles therein pronounced. We think they are applicable to our present tax system.

Appellants strongly rely upon the case of *West Penn Power Co.* v. *Board of Review and Equalization,* 112 W. Va. 442, 164 S. E. 862. That case was decided in June, 1932, and related to the assessment of real estate, a specific [fol. 331] type of property. It was there held, relying largely on *Sioux City Bridge Co.* v. *Dakota County,* 260 U. S. 441, 67 L. ed. 340, that "Under the Fourteenth Amendment of the Constitution of the United States, it is the right of a taxpayer whose property is taxed at one hundred per centum of its true and actual value to have his assessment reduced to the percentage of the value at which other properties of the same class in the same governmental unit of taxation are taxed, even though the statute requires that all property be taxed at its true and actual value." Many other cases decided by the Supreme Court of the United States could be cited in support of this holding, among which are: *Raymond* v. *Chicago Union Traction Co.,* 207 U. S. 20; *Greene* v. *Louisville & Interurban R. R. Co.,* 244 U. S. 499; *Louisville & Nashville Ry Co.* v. *Greene,* 244 U. S. 522; *Sunday Lake Iron Co.* v. *Wakefield,* 247 U. S. 350; *Bohler* v. *Calloway,* 267 U. S. 479; *Cumberland Coal Co.* v.

Board of Revision, 284 U. S. 23; *Iowa-Des Moines National Bank* v. *Bennett*. 284 U. S. 239. But the force and weight of these decisions, as applied to the present controversy, is largely, if not entirely, nullified by the recent decision of the same Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, 84 L. ed. 1254. In that case it was held that, "The Equal Protection Clause of the Fourteenth Amendment permits a State to classify the property of railroads and other public utilities separately from other property and to tax it higher", and also, "Where a State for many years systematically assessed the property of railroads and other utilities at full cash value and all other kinds of property at less than cash value, held that the [fol. 332] practice was the 'law' of the State, within the meaning of the Equal Protection Clause of the Fourteenth Amendment, although uniformity of taxation was commanded by the state constitution, and although it were true that the tax in question was sustained by the State Supreme Court by a resort to fiction." We understand this case to hold that none of the cases decided by the Supreme Court of the United States, cited above, were meant to prevent a state from applying different yardsticks to different classes of property; and, applying this principle, we would say it would be no violation of the equality and uniformity clause of either the State or Federal Constitution to apply a different yardstick to different types of property in the necessary ascertainment of the value thereof for tax purposes. The cases last cited above are distinguished, and we think that, as the law now is, appellants can find no support for their contentions under the Fourteenth Amendment of the Federal Constitution. The *Browning* case involved the assessment of a railroad, but the principle announced applies to assessments of all types and classes of property by a state or its political subdivisions. Under that decision, it is doubtful whether the ruling of this Court in the *West Penn* case could now be sustained by sole reliance on the Fourteenth Amendment.

We are not persuaded that the ruling in the *West Penn* case, basing the same on our State Constitution, requires us to hold with the contention of the appellants in the case at bar. As stated above, that case involved real estate. There was clear discrimination, because it was apparently admitted that, in assessing real estate in Brooke County, [fol. 333] approximately twenty per cent was taken from

the true and actual value thereof, and the assessment fixed at eighty per cent of such value; whereas, as to the property of the West Penn Power Company, that reduction was not made, and its real estate was assessed at its true and actual value. There could, of course, be no just excuse for that character of discrimination, and the only question before the Court was whether the legislative direction, to assess property at its true and actual value, should or should not give way to the constitutional requirements of equality and uniformity. It was decided that, under the Fourteenth Amendment of the Federal Constitution, the constitutional requirements were paramount, resulting in a reduction of the West Penn Power Company's property to eighty per cent of its value. It would, perhaps, be out of place to discuss the wisdom of that decision, because we do not think it controlling in the case at bar. It may be that the principles of that case are sound, and that under our Constitution, without reliance on the Fourteenth Amendment, we should adhere thereto. But where do they lead us? An assessor violates the law, and a portion of the taxpayers receive an advantage from such violation. When this occurs, other taxpayers naturally feel that they should be accorded the same treatment. Must the courts insist on, require and direct other violations of law by tax officials? Suppose next year the assessor of any county, or of all the counties of the State, decides to assess real and personal property of individuals at fifty per cent of its true and actual value, would not the owners of public utilities, banks, building and loan associations and federal savings and loan associa-
[fol. 334] tions be entitled to the same treatment? Is it not time to find some remedy for this situation, other than one involving an appeal to the courts to enforce a system of assessments for tax purposes which is plainly in violation of the law as written? It would be refreshing, indeed, if some taxpayer, or a group of taxpayers, would sponsor an effort to see that our tax laws are obeyed, rather than to take advantage of their open violation. It is not for this Court to point out ways by which regard for law may be required of public officials, but they exist. It is probably too much to expect that they will ever be used.

The case before us does not involve the assessment of real estate, but a type of property of a peculiar nature and as to which the legislature has exercised its power to direct how it shall be assessed, and as to which different methods

of ascertaining values must be employed, even as between types of the same constitutional classification. The assessor, we may assume, has in good faith, made an effort to ascertain the value of intangible property in Kanawha County, other than that owned by appellants. It is entirely different from a case where the same type of property, requiring the same methods of ascertaining the value, is involved, and where one taxpayer's property of the same type is assesssed at its true and actual value and another taxpayer's assessed at a lower figure. It is understandable how a court in such a case might feel disposed to favor a taxpayer, even at the risk of encouraging violations of plain statutory law by taxing authorities. Discrimination in the assessment of property of the same type, in the same taxing district cannot be defended, and we do not mean to defend such a practice in any sense. We think money and [fol. 335] solvent securities should be assessed at their face value, and we think the arbitrary practice of allowing a certain reduction from the face value of notes and accounts should be discontinued so far as possible, although we realize that some plan of estimating value must be followed in a great many instances. Our holding goes no further than this: What has been shown with reference to the assessment of intangible property in Kanawha County, of types other than that owned by the appellants, is insufficient to establish a case of discrimination, which would justify us in applying the principles announced in *West Penn Power Co.* v. *Board of Review and Equalization, supra.*

In view of the fact that the Legislature has given specific direction as to the assessment of the property of the appellants, and the assessments were made in conformity with such direction; and further that there has been no clear showing of discrimination, to the prejudice of the appellants, in the assessment of intangible property in Kanawha County, the order of the circuit court of said county, complained of, is affirmed.

Affirmed.

[fol. 336] In Supreme Court of Appeals of West Virginia

Order Suspending Mandate—March 21, 1944

Petition for rehearing and reargument and petition for stay of mandate having been filed in this cause, it is ordered by the court that the mandate heretofore entered herein be, and it is hereby, suspended until further order of the court.

In Supreme Court of Appeals of West Virginia

Order Denying Petition for Rehearing, etc.—May 15, 1944

The Court, having maturely considered the petition for rehearing and reargument filed in this cause, a majority of the Court is of opinion to and doth hereby deny the prayer of the petition for rehearing and reargument but is of opinion to and doth grant the prayer of the petition [fols. 337-339] for a stay of the mandate entered in this cause for a period of ninety days to enable the appellants to apply to the Supreme Court of the United States for an appeal or writ of certiorari pursuant to the provisions of the Code of West Virginia 58-5-31 and Title 28, Section 350, U. S. C. A.

It is ordered that the mandate of this Court be stayed for a period of ninety days from this date in order to permit the appellants to apply to the Supreme Court of the United States for an appeal or writ of certiorari herein. Bond required in the penalty of three hundred dollars and conditioned according to law. Judge Kenna would grant the petition for rehearing and reargument.

Bond on stay for $300.00 approved and filed June 1, 1944 omitted in printing.

[fol. 340] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 341] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

PETITION FOR APPEAL—Filed July 21, 1944

The defendants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, feeling themselves aggrieved by the judgment of the Court entered herein on the 15th day of May, 1944, for the reasons set forth in their assignment of errors which is filed herewith, hereby pray an appeal from such judgment to the Supreme Court of the United States, and further pray that an order be entered fixing the amount and form of security to be given by the defendants, as appellants, and conditioned as the law directs, and that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, By: Koontz & Koontz, J. Campbell Palmer, III, W. Elliott Nefflen, Attorneys for said Appellants.

[fol. 342] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 21, 1944

It appearing to the Honorable Hershel H. Rose, President of the Supreme Court of Appeals of West Virginia, that the defendants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, have filed their petition for appeal to the Supreme Court of the United States, and

have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court' Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question,

It Is Ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment rendered in this cause on the 15th day of May, 1944, and that the defendants give a bond with good and sufficient security in the [fol. 343] sum of one thousand dollars ($1000.00), that they as appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated, July 21, 1944.

Herschel H. Rose, President of the Supreme Court of Appeals of West Virginia.

[fols. 344-346] Bond on Appeal for $1,000.00 approved and filed Aug. 5, 1944 omitted in printing.

[fol. 347] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

[File endorsement omitted.]

ASSIGNMENT OF ERRORS—Fiied July 21, 1944

Defendants file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Appeals entered on the 15th day of May, 1944.

The Court erred:

1. The finding and judgment of the Court are contrary to the law and evidence.

2. In holding that the Assessor of Kanawha County, West Virginia, was correct in making and determining true and accurate valuations of the property of the defendants at the specific direction of the State Tax Commis-

sioner, and in sustaining the Circuit Court of Kanawha County, West Virginia, in such determinations, and in its reversal of the findings and determinations made by the County Court of Kanawha County sitting as a Board of Review and Equalization, in its holding as to the correct assessment for taxation purposes of the properties of the defendants.

The Court erred in making the assessment of the intangible property for the year 1941 of Charleston Federal [fol. 348] Savings & Loan Association $921,180.00 instead of $639,030.00; in making the assessment of First Federal Savings & Loan Association $249,080.00 instead of $170,450.00; in making the assessment of West Virginia Building & Loan Association $69,490.00 instead of $48,230.00; and in making the assessment of Empire Federal Savings & Loan Association $273,880.00 instead of $189,600.00.

3. In finding that although other personal property placed in Classification I, as provided by Section 1, Article X, of the Constitution of West Virginia (that being the class in which the properties of building and loan and savings and loan associations are placed for taxation purposes), may be assessed at a lower valuation than the true and actual value, namely, a certain percentage of the true and actual value thereof, in the past that percentage being thirty percent (30%), such fact is not discriminatory against these said four associations; such finding and judgment of the Supreme Court of Appeals of West Virginia are in violation of and contrary to the provisions of Section 1 of the 14th Amendment to the Constitution of the United States of America, and also the provisions of Section 1, Article X, of the Constitution of West Virginia, in that said four associations are not accorded the equal protection of the laws, and are discriminated against in favor of other taxpayers owning property placed in said Classification I, and are unequally burdened; therefore, their properties are not uniformly taxed with other properties in Classification I or with properties placed in Classifications II, III and IV.

The Court erred in holding that the law of West Virginia, as found in Chapter 11, Article 3, Section 14 (a), as amended by Chapter 118, Acts 1939 of the West Virginia Legislature, so interpreted as prohibiting the Assessor of [fol. 349] Kanawha County, West Virginia, from allowing

for assessment purposes of the four associations a deduction of thirty percent (30%) of the valuations of their properties, which was the minimum deduction accorded the properties of all other persons in the same classification.

The Court further erred in finding that said Section 14 required that these four associations, and other similar building and loan and savings and loan associations were meant to be discriminated against by the Legislature of West Virginia in enacting said section.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, by Koontz & Koontz, J. Campbell Palmer, III, W. Eliott Nefflen, J. Campbell Palmer III, Attorneys for said Appellants.

[fols. 350-415] Citation, in usual form, filed July 21, 1944, omitted in printing.

[fols. 416-430] August 1, 1944.

Mr. B. B. Jarvis, Clerk, Supreme Court of Appeals of West Virginia, Capitol Building, Charleston, West Virginia

Re: In the Matter of Tax Assessments Against Charleston Federal Savings & Loan Association, et al., vs. George P. Alderson, State Tax Commissioner of West Virginia

Dear Mr. Jarvis:

The appeal in the above case having been granted, this is to advise you that the appellants will ask you to send to the Clerk of the United States Supreme Court in Washington the printed record, which contains all of the proceedings had in all of the courts prior to the time the appeal was allowed in the Supreme Court of Appeals of West Virginia.

We will ask you to send this printed record, together with all of the motions, pleadings, orders, judgments, stays, etc., either originals or certified copies thereof, entered or filed in the Supreme Court of Appeals of West Virginia, together with this printed record, to be the record in the case.

Very sincerely, Koontz & Koontz, by J. Campbell Palmer, III.

[fol. 431] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 432] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF THE PARTS OF RECORD NECESSARY FOR CONSIDERATION—Filed September 1, 1944

1. The finding and judgment of the Supreme Court of Appeals of West Virginia are contrary to the law and evidence and constitute a violation of the federal rights of the appellants.

2. The Supreme Court of Appeals of West Virginia erred in its determination that the Assessor of Kanawha County, West Virginia correctly made and determined the true and accurate valuations of the property of the appellants (made at the specific direction of the State Tax Commissioner of [fol. 433] West Virginia), and in sustaining the Circuit Court of Kanawha County, West Virginia, in such determinations, and in reversing the findings and determinations made by the County Court of Kanawha County, sitting as a Board of Review and Equalization, and such holdings were a discrimination against the appellants and violated their federal rights.

3. The Supreme Court of Appeals of West Virginia erred in holding that the assessments for the year 1941 of the capital of Charleston Federal Savings & Loan Association was $921,180.00 instead of $639,030.00 as determined by the County Court; in holding that the assessment of the capital of First Federal Savings & Loan Association was $249,080.00 instead of $170,450.00 as determined by the County Court; in holding the assessment of the capital of West Virginia Building & Loan Association was $69,490.00 instead of $48,230.00 as determined by the County Court; and in holding the assessment of the capital of Empire Federal Savings & Loan Association was $273,880.00 instead of $189,600.00 as determined by the County Court.

4. The Supreme Court of Appeals of West Virginia was in error and its holding discriminated against these appellants and was violative of their federal rights, in sustaining the validity of that statute of the laws of West Virginia found in Chapter 11, Article 3, Section 14-A, as amended by Chapter 118, Acts of 1939, of the West Virginia Legislature, by interpreting that statute as prohibiting the Assessor of Kanawha County, West Virginia, from

allowing, for assessment purposes of the four appellants herein, a deduction of 30% of the valuation of their respective capital, which was the undisputed minimum deduction accorded to the properties of all other persons in the same classification.

[fol. 434] 5. The Supreme Court of Appeals of West Virginia erred and discriminated against the appellants, and violated their federal rights, in sustaining the validity of said above mentioned statute, and by its interpretation thereof, in finding that although other personal property placed in Classification I, as provided by Section 1, Article X of the Constitution of West Virginia (that being the class in which building and loan and savings and loan associations are placed for taxation purposes), may be assessed at a lower valuation than the true and actual value, namely, a certain percentage of the true and actual value thereof, in the past that percentage being a minimum of 30%, that the appellants were not likewise entitled to such deduction in their assessments; and the Court erred in holding that the refusal to allow such deduction to appellants was not discriminatory against them and violative of their federal rights.

These appellants maintain that such finding and judgment of the Supreme Court of Appeals of West Virginia is in violation of and contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, and also the provisions of Section 1, Article X of the Constitution of West Virginia, in that said four associations are not accorded equal protection of the laws, are discriminated against in favor of other taxpayers owning property classified in said Classification I, and appellants are unequally burdened; and that therefore their properties are not uniformly taxed with other properties in Classification I, or proportionately with properties properly placed in Classifications II, III and IV.

6. Chapter 11, Article 3, Section 1 of the Code of West Virginia, as interpreted by the Supreme Court of Appeals of West Virginia, in connection with Chapter 11, Article 3, Section 14-A, is invalid and, together with said last mentioned statute as interpreted by that said Court in upholding the action of the said State Tax Commissioner of West [fol. 435] Virginia in his interpretation thereof, constitute

discrimination against the said appellants herein, and are violative of their federal rights.

7. The said Supreme Court of Appeals of West Virginia erred and discriminated against these appellants, and by its holding and judgment violated their federal rights, in holding that the said above mentioned statutes were by the Legislature of West Virginia meant to be a discrimination against the appellants and other similar building and loan and savings and loan associations, and in holding that there was no discrimination or violation of appellants' federal rights shown, by reason of the appellants and others similarly situated being assessed at 30% higher than all other taxpayers in the same classification, so long as the appellants and all other similar building and loan and savings and loan associations throughout the State of West Virginia were equally treated as among themselves.

These appellants maintain, and will contend, that even though all building and loan and savings and loan associations in West Virginia were treated equally as between themselves by the Assessors of the State of West Virginia, at the direction of the State Tax Commissioner of West Virginia, yet if all other taxpayers in the same classification, as set forth by the Constitution and laws of the State of West Virginia, were allowed a 30% deduction from the true and actual values of their properties, that unless and until such deduction is given to these appellants there is actual and intentional discrimination shown, and their federal rights, as hereinabove stated, have been violated.

[fol. 436] *Parts of Record to be Printed*

The appellants believe that it will be necessary to print the entire transcript of the record, less, however, those parts as provided in paragraph 9 of Rule 13, to-wit, "all duplication, repetition of titles, and all obviously unimportant matter." In this latter category may be included those parts of the exhibits which were printed in the record used before the Supreme Court of Appeals of West Virginia, which exhibits were originally upon printed forms identical in form and manner, and contained, as filed in the case, many blank parts and pages, that a printing of one of such exhibits in full will be sufficient, and the printing of only the material parts of the other exhibits, without a repetition

of printing of the blank parts of the other exhibits, will be sufficient.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, Appellants, By J. Campbell Palmer, III, Their Counsel.

[fol. 436a] [File endorsement omitted].

[fol. 437] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—October 16, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing on the merits.

[fol. 438] Endorsed on Cover: Enter J. Campbell Palmer, III. File No. 48,853 West Virginia, Supreme Court of Appeals, Term No. 400. Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, Appellants, vs. George P. Alderson, State Tax Commissioner of West Virginia. Filed August 26, 1944. Term No. 400 O. T. 1944.

No. 4[illegible]

[illegible] FEDERAL SAVINGS & LOAN ASSOCIATION, [illegible] FEDERAL SAVINGS & LOAN ASSOCIATION, [illegible] AND [illegible] FEDERAL SAVINGS & LOAN ASSOCIATION, APPELLANTS,

vs.

GEORGE E. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

FILED AUGUST 24, 1964.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION AND EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, APPELLANTS,

vs.

GEORGE P. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

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IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

No. 9501

In Re: Tax Assessments Against Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building and Loan Associaton and Empire Federal Savings & Loan Association

Order Allowing Appeal—May 17, 1943

On a former day, to-wit, August 21st, 1942, came again the petitioners, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, by Koontz & Koontz and W. Elliott Nefflen, its attorneys, and presented to the Court a petition praying for an appeal from a decree of the Circuit Court of Kanawha County pronounced in this cause on the 23rd day of December, 1941, with the record therein accompanying the petition, which being seen and inspected, the appeal prayed for is granted by a majority of the Court; but, it is not to take effect until the petitioners, or some person or persons for them shall have given bond before the Clerk of the Circuit Court of Kanawha County [fol. b] with good security to be approved by said Clerk in the penalty of two hundred dollars and conditioned according to law. Judge Fox would refuse the appeal.

[fol. 312] In Supreme Court of Appeals of West Virginia

Orders of Continuance

At another day, to-wit, on the 17th day of September, 1943, the following order was made and entered, to-wit:

For reasons appearing to the Court and by agreement of counsel this cause is continued until the first day of the January, 1944 term.

At another day, to-wit, on the 12th day of October, 1943, the following order was made and entered, to-wit:

Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced in this cause on the 23rd day of December, 1941.

For reasons appearing to the Court and by agreement of counsel this cause is continued generally.

At another day, to-wit, on the 10th day of January, 1944, the following order was made and entered, to-wit:

Upon an appeal to a decree of the Circuit Court of Kanawha County, pronounced in this cause on the 23rd day of December, 1941.

For reasons appearing to the Court and by agreement of counsel this cause is continued to Tuesday, January 18, 1944.

[fol. 313] In Supreme Court of Appeals of West Virginia

Order of Submission—January 19, 1944

Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced in this cause on the 23rd day of December, 1941.

This day came the appellants, Charleston Federal Savings & Loan Association, W. Va. Building & Loan Association, and Empire Federal Savings & Loan Association, by Koontz & Koontz, W. Eliott Nefflen, and Harry B. Lambert, their attorneys, and the appellee, Honorable George P.

Alderson, State Tax Commissioner, by Hon. Ira J. Partlow, Acting Attorney General, and Hon. Kenneth E. Hines, Assistant Attorney General, his attorneys, and this cause was fully heard upon the transcript of the record herein and the argument of counsel thereon, and is submitted for decision.

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

JUDGMENT—February 22, 1944

Upon an appeal from a decree of the Circuit Court of Kanawha County pronounced on the 23rd day of December, 1941.

The Court, having maturely considered the transcript of the record herein and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is no error in the decree complained of. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 23rd day of December, 1941, be, and the same is hereby affirmed, and that the appellants [fol. 314] do pay unto the appellee thirty dollars damages and his costs about his defense in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The syllabus of points adjudicated, prefixed to the written opinion prepared by Judge Fox, was concurred in by Judges Rose, Kenna, Riley and Lovins.

[fol. 315] [File endorsement omitted]

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 9501

In Re: TAX ASSESSMENTS

Against

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, West Virginia Building and Loan Association and Empire Federal Savings & Loan Association.

Kanawha County, Affirmed.

Fox, Judge:

1. "The legislature has power to prescribe the method by which the valuation of any class of property may be ascertained, and, where the value of the same class of property is ascertained throughout the state in the same manner, such valuation can not be regarded as unconstitutional for lack of uniformity or equality." *Charleston & Southside Bridge Co.* v. *County Court*, 41 W. Va. 658, Pt. 2, Syl.

2. Under Section 1, Article X of the Constitution of West Virginia, the legislature has power to direct by law the method of assessment of all classes and types of property, and to apply different methods to different types of property, even though included in the same constitutional classification as respects the rate of levies which may be laid thereon.

[fol. 316] 3. To entitle a complaining taxpayer to relief under the "equal and uniform" provision of Section 1, Article X of the Constitution of West Virginia, there must be a clear showing of discrimination against him in the assessment of the same type of property. Such discrimination is not established where the showing is only that other property of a different type is assessed at less than its apparent or face value, through a process of estimation, and in a good faith effort to arrive at the true and actual value thereof.

[fol. 317] OPINION—Filed February 22, 1944

Fox, Judge:

The appellants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, complain of a final order of the Circuit Court of Kanawha County, entered on the 23rd day of December, 1941, fixing the 1941 assessment for tax purposes of the intangible property owned by them, respectively. Their appeal is prosecuted under the provisions of Code, 11-3-25, as amended by Chapter 41, Acts of the Legislature, Regular Session, 1933.

The Assessor of Kanawha County, following instructions of the State Tax Commissioner, made the following assessments of the intangible property of the appellants, taxable in said county, for the year 1941: Charleston Federal Savings & Loan Association, $921,180; First Federal Savings & Loan Association, $249,080; West Virginia Building & Loan Association, $69,490; and Empire Federal Savings & Loan Association, $273,880. On protest filed before the county court of said county, acting as a Board of Review and Equalization, under the provisions of Article 3, Chapter 41, Acts Regular Session, 1933, a hearing was had before said board, which resulted in an order reducing said assessments approximately thirty per cent, and they were fixed as follows: Charleston Federal Savings & Loan Association, $639,030; First Federal Savings & Loan Association, $170,450; West Virginia Building & Loan Association, $48,230; and Empire Federal Savings & Loan Association, $189,600. These reductions appear to have been made solely on the theory that other property of the same class, in the same taxing district, was assessed at approximately [fol. 318] seventy per cent of its true and actual value, and that the assessments made by the assessor discriminated against protestants. No contention has ever been made that the assessments of the property of the appellants, made by the assessor, were in excess of the true and actual value thereof.

The State Tax Commissioner prosecuted an appeal from the action of the Board of Review and Equalization to the Circuit Court of Kanawha County, and, on December 23, 1941, that court entered an order reversing the action

of said board and fixing the assessments in question at the same amounts as those originally made by the assessor, from which action of the circuit court we granted this appeal.

The property of the appellants, the assessment of which is here involved is Class I property, as defined by Article 8 of Chapter 38, Acts Regular Session, 1933, and carries an initial tax rate of fifty cents on each one hundred dollars valuation. This statutory classification was made under Section 1, Article X of our Constitution, the pertinent provisions of which are:

> "Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of propety of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon * * *."

[fol. 319] In connection with the constitutional provision quoted above, it is well to keep in mind the general provisions of our statute, Code, 11-3-1, relating to the assessment of property of all classes. These are:

> "All property shall be assessed annually as of the first day of January at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, * * *."

Questions affecting the assessment of the property of building and loan associations have received the atten-

tion of the courts and the legislature in recent years. Prior to the adoption of the tax limitation amendment, (Section 1 of Article X of the Constitution) and enabling statutes enacted thereunder, the property of building and loan associations was not assessed for tax purposes to the association itself, but investments therein were assessed to individual firm or corporate stockholders, following the decision of this Court in *Ohio Building and Loan Company* v. *County Court*, 42 W. Va. 818, 26 S. E. 203. However, in the later case of *Charleston Federal Building & Loan Association* v. *James*, 120 W. Va. 781, 200 S. E. 845, decided on December 8, 1938, it was held that, "Both state and federal building and loan associations are incorporated companies within the meaning of Code, 11-3-12, and are corporations within the meaning of Code, 11-3-13. Therefore, their intangible and other personal property is subject to taxation." [fol. 320] The legislature convened in regular session in January, 1939, and was charged with knowledge of the case last cited above when it enacted Chapter 118 of the Acts of that session, now carried in Michie's Code, 1943, as Section 14a, Article 3, Chapter 11. That section is a comprehensive one, and covers in detail all phases of the assessment of the property of building and loan and federal savings and loan associations. We note the first paragraph of the section, which reads as follows:

> "The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such invest-

ment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources."

Paragraphs 2 and 3 of the section go into further detail as to the duties of the officials of such associations, the assessment of its real estate, and other details not necessary to consider here.

We do not understand that appellants question either the intent or the power of the legislature to fix the methods of assessment of the particular type of property owned by building and loan and federal savings and loan associa- [fol. 321] tions. The power of the Legislature to enact such a statute seems clear, and has been exercised in a number of instances. For example, Code, 11-6, as amended, covers the assessment of the property of public service corporations; Code, 11-3-12 and 13, prescribes how the property of other corporations shall be assessed; Section 14 of the same article, as amended by Chapter 40, Acts Regular Session, 1933, provides for the assessment of the property of banking institutions; Section 15, as amended by Chapter 40, Acts Regular Session, 1933, covers the assessment of the property used in trade or business by natural persons. Therefore, when the legislature enacted Chapter 118 of the Acts of 1939, it only added to existing statutes covering the assessment of various types of property, and created no innovation on former practices. Even if it had done so, Section 1, Article X of the Constitution gives the legislature power to direct how the value of any class of property shall be ascertained, and this power has been expressly upheld by this Court in *Charleston & Southside Bridge Co.* v. *Kanawha County Court*, 41 W. Va. 658, 24 S. E. 1002.

But we do not understand the appellants to contend that, admitting the power and efficacy of the legislative enactment of 1939, the same cannot be administered as directed, where to do so would discriminate against owners of other property of the same class in the same taxing district. This in reality is the paramount question presented on this appeal.

Appellants have produced testimony tending to show that other classes of property, such as real estate, oil and gas properties, automobiles and household goods are as- [fol. 322] sessed at less than their true and actual value in

Kanawha County. We think this testimony must be disregarded. The "equal and uniform" provision of our Constitution "means merely that as to classes of property, business or income there shall be uniformity of taxation." *Christopher* v. *James*, 122 W. Va. 665, 12 S. E. 2d 813, 816. See also *Charleston & Southside Bridge Co.* v. *County Court, supra;* In re *Hancock County Federal Savings & Loan Association*, 125 W. Va. ——, 25 S. E. 2d 543. But they also introduce evidence which shows the manner in which intangible personal property such as notes, accounts and certain types of bonds, as well as other types of Class I property are assessed. It is important at this point to ascertain just how these assessments are made, and, fortunately, we have the testimony of the chief deputy of the Assessor of Kanawha County, whose statement is clear and explicit as to the methods of assessment followed. After stating that live stock, property employed in and products of agriculture, money, notes, accounts receivable, and bonds other than government, state and municipal, and shares of building and loan associations are treated as Class I property, his examination follows:

"Q. In issuing your instructions to your field deputies will you state how you instruct them to value the various types of property which you state are in Class 1? What method or plan is used?

"A. Money is valued, of course, at 100%; accounts receivable are valued at about 70% unless they are installment accounts, and they are valued at approximately 65%.

"Q. You mean installment accounts are valued at 65%?

"A. Yes.

"Q. You mean 65% of their book value or the value shown on the face?

[fol. 323] "A. Yes, the book values shown on the face of them.

"Q. How about other personal property such as livestock and agricultural products?

"A. Livestock is valued *as* approximately 50% of the purchase value.

"Q. How do you ascertain that purchase value in your instructions to your field deputies?

"A. By asking the farmer what he paid for a plow or cattle *of* livestock, and also using their own judgment.

"Q. How about notes?

"A. Notes are assessed at approximately 70%.

"Q. How about bonds?

"A. Bonds are assessed at approximately 70% unless their market value is less. Then, of course, if the market value of bonds is less than 70% we generally factor them slightly under their market value.

"Q. But generally you take 70% of the face value?

"A. That is the usual general procedure, yes, sir.

"Q. Is that same system used throughout Kanawha County in all its magisterial districts by all of your field deputies?

"A. Yes, sir.

"Q. Is that done under your supervision?

"A. Yes, sir.

"Q. From whom do you receive your instructions?

"A. From Mr. Abbot, the Assessor of Kanawha County."

There is also testimony showing that the assets of certain loan companies, shown by the record to be commonly called "Small Loan Companies", as distinguished from commercial banks and trust companies are assessed at figures running from eighty-five to eighty-eight per cent of their face value. There is no showing as to the method employed in the assessment of the assets of trust companies and commercial banks, and we assume such assessments are made as directed by Code, 11-3-14, as amended [fol. 324] by Chapter 40, Acts Regular Session, 1933. The testimony shows that the assessor in fixing the value of Class I property, employed a uniform and systematic plan as to the different types of property included in the general Class I classification. Therefore, no question of error of judgment is involved. What the assessor did was intentional and followed a preconcerted plan, and, this being true, is discrimination against the appellants clearly shown? Money is assessed at its face value, as are the assets of commercial banks, and as to them it cannot be claimed there is any discrimination one over the other, or against the appellants. It may be claimed that the method employed in the assessment of loan companies is discriminatory, but

to sustain that claim appellants would have to concede that the securities held by such loan companies are of the same type, and as well secured as their own. That loan companies of the class mentioned are engaged in a business different from, and involving greater risk than that in which building and loan and federal savings and loan associations are engaged is well known and will not, we think, be disputed. We run into a situation impossible of solution when we attempt to make any comparison as between the assessments of live stock, agricultural equipment and farm products on the one hand, and secured assets of a bank or building and loan association on the other. When we come to assessment of notes and accounts, we think it clear, from the testimony of the deputy assessor, that what is done is assess them at sixty-five to seventy per cent of their [fol. 325] face value as reported to the assessor. Bonds are assessed at seventy per cent of their face value, unless their market value is less, and then at a figure slightly under their market value. In view of all this, can it be said that there has been such discrimination as justifies the complaint of the appellants.

That the assets of the appellants are made up of high-grade securities will not be denied. There is and can be no reasonable doubt as to their being worth one hundred per cent of their face value. No one can question values based on securities of the Government of the United States. When we come to their chief business, that of lending money on real estate, we must consider that every loan is made upon fair appraisement of real estate; the loans are confined to a percentage of the appraised value of such real estate, in order to guard against fluctuation in value; the property on which the loans are made is insured against destruction by fire and otherwise, and, generally, every possible step taken to secure the solvency of every dollar of such assets. In addition their business is subject to the rigid and constant supervision of the State or Federal Government, or both, and their solvency at all times is a mandatory requirement for doing business. Such a class of assets is, of course, clearly distinguishable from the ordinary run of notes and accounts. Of course, notes held by individuals, firms and corporations are, sometimes, equally well secured; but when we treat them as a class such statement does not hold good.

[fol. 326] While our State Constitution requires uniformity and equality in taxation, no one has ever believed that either could be attained as a practical matter. The constitutional provision is a statement of an ideal, and is implemented by numerous statutes, all seeking to put into practice such ideal so far as is humanly possible. But do all we can, and attempt as rigidly as we may to enforce such statutes, we will fall far short of attaining equality, uniformity and justice in levying taxes. In the first place assessors often deliberately fail to perform their full duty; but their most sincere effort to perform such duty would not result in an assessment fair to everyone. For example, who can know the exact value of an oil or gas well; or, to confine ourselves to Class I property, the value of a herd of cattle, or a flock of sheep, or agricultural implements; or how much will be realized from the notes and accounts of any business or individual. No one can escape the variations of financial fortune, and as to every note and account there is some risk. Then, delays in and costs of collection must be considered. No one can fix with certainty the real value of the great mass of property of all types and classes, and a certain amount of estimate and conjecture is inevitable.

In these circumstances assessors are warranted in adopting some reasonable plan for the valuation of types of property, the value of which may be affected by the considerations above mentioned. As to notes and accounts, assessors do not have the facilities to investigate the financial standing of debtors, and if they had, perfection [fol. 327] could not be attained. They are driven to adopt some standard, and if they do so, and it is a reasonable one, the results of its application cannot be considered as a discrimination against owners of other property, the value of which can be more definitely determined, and is largely fixed by its very nature. The results may not be entirely fair to other taxpayers. In many instances notes and accounts worth full value may be assessed at less than their value and, in individual cases, a clear case of discrimination may be shown to exist. But this does not rise to the importance of general discrimination as between property of different types, even that within the same legal classification. It must be agreed that every effort should be made to avoid such instances of discrimination, and the use of

the plan adopted by the Assessor of Kanawha County, and other assessors throughout the State, should be limited to cases where no better plan can be devised. Every assessor should feel the obligation to prevent discrimination between taxpayers to the fullest extent possible.

On the record before us, we do not believe a clear case of discrimination has been shown. No one contends that the property of the appellants has been assessed in excess of its true and actual value. Appellants would not be permitted to do business if their respective assets were less in value than that reported to the assessor. State and Federal authorities would intervene, if such a situation existed. As has been stated above, the assets of each of the appellants were originally selected after the most rigid test as to its value, and care taken to guard against the fluctuation [fol. 328] in values of properties securing such assets. Clearly, as relates to safety and security it is a different type of property from the ordinary note or account. Why, therefore, should we be asked to reduce an assessment below its true value, merely because as to other property, the value of which is uncertain, and by reason of its character cannot be accurately determined, assessing officers have, in good faith, adopted a plan for arriving at an estimated value?

Then, what evidence is there in the record that Class I intangible property, not covered by the type of property owned by the appellants, is assessed at less than its true value. Of course, appellants cannot, on account of practical difficulties, show that it is assessed at less than its value, and, for the same reason, the assessor cannot show the opposite. Neither the assessor nor the appellants know, or can by any reasonable effort ascertain, the true and actual value of the intangible Class I property in Kanawha County, represented by the common run of notes and accounts. If this be true, how can it be claimed that any discrimination was practiced. We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value. The more or less ar*ib*trary allowance of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. We think it was. Some plan which would take into

account the difference between the secured notes and unsecured notes and accounts could, and should be devised; but mere error of judgment as to the plan adopted is not [fol. 329] sufficient to establish discrimination, where the plan, though imperfect, is adopted in a good faith effort to secure fair and equitable assessment, and equality and uniformity in taxation.

Recent radical changes in our tax system, brought about by the adoption of the tax limitation amendment, Section 1 of Article X of our Constitution, whereby property is classified, gives rise to the suggestion that once property has been classified, there can be no further distinction as to property within a given classification. Whether there can be such distinction is perhaps dependent on the character of the property involved. Each of the four classifications of property for tax purposes includes property of different types, for the ascertainment of the value of which different methods are employed. In the very nature of things this must be true. The Constitution plainly says that the value of all property for tax purposes shall be ascertained "as directed by law." Who gives the direction? Obviously, the sole law-making authority, the legislature. In respect to building and loan and federal savings and loan associations, as well as other types of property, the legislature has given specific direction, and as to other types of property the directions are more general. We do not doubt the inherent and constitutional power of the legislature to give these directions, so long as they are designed to provide a method in keeping with the aim to tax property equally and uniformly, as required by our Constitution. So far as concerns our State Constitution, we think the question is set at rest by the decision of this Court in *Charleston & Southside Bridge Co.* v. *Kanawha County Court, supra.* That case was decided in 1896, when there [fol. 330] was no classification of property for tax purposes, and uniform tax rates, in each taxing district, applied to all property. However, Section 1 of Article X of the Constitution, as it then was, contained the same provisions with respect to equality and uniformity as those contained in the present Constitution. In that case the plaintiff was the owner of a toll bridge, and the legislature had provided a particular method for the assessment of toll

bridges and ferries. Points 2, 3 and 4 of the syllabus read as follows:

> "2. The legislature has power to prescribe the method by which the valuation of any class of property may be ascertained, and, where the value of the same class of property is ascertained throughout the state in the same manner, such valuation can not be regarded as unconstitutional for lack of uniformity or equality.
>
> "3. The Constitution prescribes what property is to be taxed, and the legislature prescribes the manner in which it shall be taxed, which mode of taxation shall be equal and uniform as to all classes of property.
>
> "4. A tax upon all business of the same class, which is uniform as to that kind of business, is not unconstitutional."

We know of no subsequent case which in any way departs from that decision. It was cited with approval in *Christopher* v. *James, supra.* The later classification of property does not, in our opinion, call for any departure from the principles therein pronounced. We think they are applicable to our present tax system.

Appellants strongly rely upon the case of *West Penn Power Co.* v. *Board of Review and Equalization*, 112 W. Va. 442, 164 S. E. 862. That case was decided in June, 1932, and related to the assessment of real estate, a specific [fol. 331] type of property. It was there held, relying largely on *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. ed. 340, that "Under the Fourteenth Amendment of the Constitution of the United States, it is the right of a taxpayer whose property is taxed at one hundred per centum of its true and actual value to have his assessment reduced to the percentage of the value at which other properties of the same class in the same governmental unit of taxation are taxed, even though the statute requires that all property be taxed at its true and actual value." Many other cases decided by the Supreme Court of the United States could be cited in support of this holding, among which are: *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499; *Louisville & Nashville Ry Co.* v. *Greene*, 244 U. S. 522; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350; *Bohler* v. *Calloway*, 267 U. S. 479; *Cumberland Coal Co.* v.

Board of Revision, 284 U. S. 23; *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239. But the force and weight of these decisions, as applied to the present controversy, is largely, if not entirely, nullified by the recent decision of the same Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, 84 L. ed. 1254. In that case it was held that, "The Equal Protection Clause of the Fourteenth Amendment permits a State to classify the property of railroads and other public utilities separately from other property and to tax it higher", and also, "Where a State for many years systematically assessed the property of railroads and other utilities at full cash value and all other kinds of property at less than cash value, held that the [fol. 332] practice was the 'law' of the State, within the meaning of the Equal Protection Clause of the Fourteenth Amendment, although uniformity of taxation was commanded by the state constitution, and although it were true that the tax in question was sustained by the State Supreme Court by a resort to fiction." We understand this case to hold that none of the cases decided by the Supreme Court of the United States, cited above, were meant to prevent a state from applying different yardsticks to different classes of property; and, applying this principle, we would say it would be no violation of the equality and uniformity clause of either the State or Federal Constitution to apply a different yardstick to different types of property in the necessary ascertainment of the value thereof for tax purposes. The cases last cited above are distinguished, and we think that, as the law now is, appellants can find no support for their contentions under the Fourteenth Amendment of the Federal Constitution. The *Browning* case involved the assessment of a railroad, but the principle announced applies to assessments of all types and classes of property by a state or its political subdivisions. Under that decision, it is doubtful whether the ruling of this Court in the *West Penn* case could now be sustained by sole reliance on the Fourteenth Amendment.

We are not persuaded that the ruling in the *West Penn* case, basing the same on our State Constitution, requires us to hold with the contention of the appellants in the case at bar. As stated above, that case involved real estate. There was clear discrimination, because it was apparently admitted that, in assessing real estate in Brooke County, [fol. 333] approximately twenty per cent was taken from

the true and actual value thereof, and the assessment fixed at eighty per cent of such value; whereas, as to the property of the West Penn Power Company, that reduction was not made, and its real estate was assessed at its true and actual value. There could, of course, be no just excuse for that character of discrimination, and the only question before the Court was whether the legislative direction, to assess property at its true and actual value, should or should not give way to the constitutional requirements of equality and uniformity. It was decided that, under the Fourteenth Amendment of the Federal Constitution, the constitutional requirements were paramount, resulting in a reduction of the West Penn Power Company's property to eighty per cent of its value. It would, perhaps, be out of place to discuss the wisdom of that decision, because we do not think it controlling in the case at bar. It may be that the principles of that case are sound, and that under our Constitution, without reliance on the Fourteenth Amendment, we should adhere thereto. But where do they lead us? An assessor violates the law, and a portion of the taxpayers receive an advantage from such violation. When this occurs, other taxpayers naturally feel that they should be accorded the same treatment. Must the courts insist on, require and direct other violations of law by tax officials? Suppose next year the assessor of any county, or of all the counties of the State, decides to assess real and personal property of individuals at fifty per cent of its true and actual value, would not the owners of public utilities, banks, building and loan associations and federal savings and loan associa-
[fol. 334] tions be entitled to the same treatment? Is it not time to find some remedy for this situation, other than one involving an appeal to the courts to enforce a system of assessments for tax purposes which is plainly in violation of the law as written? It would be refreshing, indeed, if some taxpayer, or a group of taxpayers, would sponsor an effort to see that our tax laws are obeyed, rather than to take advantage of their open violation. It is not for this Court to point out ways by which regard for law may be required of public officials, but they exist. It is probably too much to expect that they will ever be used.

The case before us does not involve the assessment of real estate, but a type of property of a peculiar nature and as to which the legislature has exercised its power to direct how it shall be assessed, and as to which different methods

of ascertaining values must be employed, even as between types of the same constitutional classification. The assessor, we may assume, has in good faith, made an effort to ascertain the value of intangible property in Kanawha County, other than that owned by appellants. It is entirely different from a case where the same type of property, requiring the same methods of ascertaining the value, is involved, and where one taxpayer's property of the same type is assesssed at its true and actual value and another taxpayer's assessed at a lower figure. It is understandable how a court in such a case might feel disposed to favor a taxpayer, even at the risk of encouraging violations of plain statutory law by taxing authorities. Discrimination in the assessment of property of the same type, in the same taxing district cannot be defended, and we do not mean to defend such a practice in any sense. We think money and [fol. 335] solvent securities should be assessed at their face value, and we think the arbitrary practice of allowing a certain reduction from the face value of notes and accounts should be discontinued so far as possible, although we realize that some plan of estimating value must be followed in a great many instances. Our holding goes no further than this: What has been shown with reference to the assessment of intangible property in Kanawha County, of types other than that owned by the appellants, is insufficient to establish a case of discrimination, which would justify us in applying the principles announced in *West Penn Power Co.* v. *Board of Review and Equalization, supra.*

In view of the fact that the Legislature has given specific direction as to the assessment of the property of the appellants, and the assessments were made in conformity with such direction; and further that there has been no clear showing of discrimination, to the prejudice of the appellants, in the assessment of intangible property in Kanawha County, the order of the circuit court of said county, complained of, is affirmed.

Affirmed.

[fol. 336] In Supreme Court of Appeals of West Virginia

Order Suspending Mandate—March 21, 1944

Petition for rehearing and reargument and petition for stay of mandate having been filed in this cause, it is ordered by the court that the mandate heretofore entered herein be, and it is hereby, suspended until further order of the court.

In Supreme Court of Appeals of West Virginia

Order Denying Petition for Rehearing, etc.—May 15, 1944

The Court, having maturely considered the petition for rehearing and reargument filed in this cause, a majority of the Court is of opinion to and doth hereby deny the prayer of the petition for rehearing and reargument but is of opinion to and doth grant the prayer of the petition [fols. 337-339] for a stay of the mandate entered in this cause for a period of ninety days to enable the appellants to apply to the Supreme Court of the United States for an appeal or writ of certiorari pursuant to the provisions of the Code of West Virginia 58-5-31 and Title 28, Section 350, U. S. C. A.

It is ordered that the mandate of this Court be stayed for a period of ninety days from this date in order to permit the appellants to apply to the Supreme Court of the United States for an appeal or writ of certiorari herein. Bond required in the penalty of three hundred dollars and conditioned according to law. Judge Kenna would grant the petition for rehearing and reargument.

Bond on stay for $300.00 approved and filed June 1, 1944 omitted in printing.

[fol. 340] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 341] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

PETITION FOR APPEAL—Filed July 21, 1944

The defendants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, feeling themselves aggrieved by the judgment of the Court entered herein on the 15th day of May, 1944, for the reasons set forth in their assignment of errors which is filed herewith, hereby pray an appeal from such judgment to the Supreme Court of the United States, and further pray that an order be entered fixing the amount and form of security to be given by the defendants, as appellants, and conditioned as the law directs, and that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, By: Koontz & Koontz, J. Campbell Palmer, III, W. Elliott Nefflen, Attorneys for said Appellants.

[fol. 342] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 21, 1944

It appearing to the Honorable Hershel H. Rose, President of the Supreme Court of Appeals of West Virginia, that the defendants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, have filed their petition for appeal to the Supreme Court of the United States, and

have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question,

It Is Ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment rendered in this cause on the 15th day of May, 1944, and that the defendants give a bond with good and sufficient security in the [fol. 343] sum of one thousand dollars ($1000.00), that they as appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated, July 21, 1944.

Herschel H. Rose, President of the Supreme Court of Appeals of West Virginia.

[fols. 344-346] Bond on Appeal for $1,000.00 approved and filed Aug. 5, 1944 omitted in printing.

[fol. 347] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

[File endorsement omitted.]

ASSIGNMENT OF ERRORS—Filed July 21, 1944

Defendants file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Appeals entered on the 15th day of May, 1944.

The Court erred:

1. The finding and judgment of the Court are contrary to the law and evidence.

2. In holding that the Assessor of Kanawha County, West Virginia, was correct in making and determining true and accurate valuations of the property of the defendants at the specific direction of the State Tax Commis-

sioner, and in sustaining the Circuit Court of Kanawha County, West Virginia, in such determinations, and in its reversal of the findings and determinations made by the County Court of Kanawha County sitting as a Board of Review and Equalization, in its holding as to the correct assessment for taxation purposes of the properties of the defendants.

The Court erred in making the assessment of the intangible property for the year 1941 of Charleston Federal [fol. 348] Savings & Loan Association $921,180.00 instead of $639,030.00; in making the assessment of First Federal Savings & Loan Association $249,080.00 instead of $170,450.00; in making the assessment of West Virginia Building & Loan Association $69,490.00 instead of $48,230.00; and in making the assessment of Empire Federal Savings & Loan Association $273,880.00 instead of $189,600.00.

3. In finding that although other personal property placed in Classification I, as provided by Section 1, Article X, of the Constitution of West Virginia (that being the class in which the properties of building and loan and savings and loan associations are placed for taxation purposes), may be assessed at a lower valuation than the true and actual value, namely, a certain percentage of the true and actual value thereof, in the past that percentage being thirty percent (30%), such fact is not discriminatory against these said four associations; such finding and judgment of the Supreme Court of Appeals of West Virginia are in violation of and contrary to the provisions of Section 1 of the 14th Amendment to the Constitution of the United States of America, and also the provisions of Section 1, Article X, of the Constitution of West Virginia, in that said four associations are not accorded the equal protection of the laws, and are discriminated against in favor of other taxpayers owning property placed in said Classification I, and are unequally burdened; therefore, their properties are not uniformly taxed with other properties in Classification I or with properties placed in Classifications II, III and IV.

The Court erred in holding that the law of West Virginia, as found in Chapter 11, Article 3, Section 14 (a), as amended by Chapter 118, Acts 1939 of the West Virginia Legislature, so interpreted as prohibiting the Assessor of [fol. 349] Kanawha County, West Virginia, from allowing

for assessment purposes of the four associations a deduction of thirty percent (30%) of the valuations of their properties, which was the minimum deduction accorded the properties of all other persons in the same classification.

The Court further erred in finding that said Section 14 required that these four associations, and other similar building and loan and savings and loan associations were meant to be discriminated against by the Legislature of West Virginia in enacting said section.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, by Koontz & Koontz, J. Campbell Palmer, III, W. Eliott Nefflen, J. Campbell Palmer III, Attorneys for said Appellants.

[fols. 350-415]. Citation, in usual form, filed July 21, 1944, omitted in printing.

[fols. 416-430] August 1, 1944.

Mr. B. B. Jarvis, Clerk, Supreme Court of Appeals of West Virginia, Capitol Building, Charleston, West Virginia

Re: In the Matter of Tax Assessments Against Charleston Federal Savings & Loan Association, et al., vs. George P. Alderson, State Tax Commissioner of West Virginia

Dear Mr. Jarvis:

The appeal in the above case having been granted, this is to advise you that the appellants will ask you to send to the Clerk of the United States Supreme Court in Washington the printed record, which contains all of the proceedings had in all of the courts prior to the time the appeal was allowed in the Supreme Court of Appeals of West Virginia.

We will ask you to send this printed record, together with all of the motions, pleadings, orders, judgments, stays, etc., either originals or certified copies thereof, entered or filed in the Supreme Court of Appeals of West Virginia, together with this printed record, to be the record in the case.

Very sincerely, Koontz & Koontz, by J. Campbell Palmer, III.

[fol. 431] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 432] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION OF THE PARTS OF RECORD NECESSARY FOR CONSIDERATION—Filed September 1, 1944

1. The finding and judgment of the Supreme Court of Appeals of West Virginia are contrary to the law and evidence and constitute a violation of the federal rights of the appellants.

2. The Supreme Court of Appeals of West Virginia erred in its determination that the Assessor of Kanawha County, West Virginia correctly made and determined the true and accurate valuations of the property of the appellants (made at the specific direction of the State Tax Commissioner of [fol. 433] West Virginia), and in sustaining the Circuit Court of Kanawha County, West Virginia, in such determinations, and in reversing the findings and determinations made by the County Court of Kanawha County, sitting as a Board of Review and Equalization, and such holdings were a discrimination against the appellants and violated their federal rights.

3. The Supreme Court of Appeals of West Virginia erred in holding that the assessments for the year 1941 of the capital of Charleston Federal Savings & Loan Association was $921,180.00 instead of $639,030.00 as determined by the County Court; in holding that the assessment of the capital of First Federal Savings & Loan Association was $249,080.00 instead of $170,450.00 as determined by the County Court; in holding the assessment of the capital of West Virginia Building & Loan Association was $69,490.00 instead of $48,230.00 as determined by the County Court; and in holding the assessment of the capital of Empire Federal Savings & Loan Association was $273,880.00 instead of $189,€ 00 as determined by the County Court.

4. The Supreme Court of Appeals of West Virginia was in error and its holding discriminated against these appellants and was violative of their federal rights, in sustaining the validity of that statute of the laws of West Virginia found in Chapter 11, Article 3, Section 14-A, as amended by Chapter 118, Acts of 1939, of the West Virginia Legislature, by interpreting that statute as prohibiting the Assessor of Kanawha County, West Virginia, from

allowing, for assessment purposes of the four appellants herein, a deduction of 30% of the valuation of their respective capital, which was the undisputed minimum deduction accorded to the properties of all other persons in the same classification.

[fol. 434] 5. The Supreme Court of Appeals of West Virginia erred and discriminated against the appellants, and violated their federal rights, in sustaining the validity of said above mentioned statute, and by its interpretation thereof, in finding that although other personal property placed in Classification I, as provided by Section 1, Article X of the Constitution of West Virginia (that being the class in which building and loan and savings and loan associations are placed for taxation purposes), may be assessed at a lower valuation than the true and actual value, namely, a certain percentage of the true and actual value thereof, in the past that percentage being a minimum of 30%, that the appellants were not likewise entitled to such deduction in their assessments; and the Court erred in holding that the refusal to allow such deduction to appellants was not discriminatory against them and violative of their federal rights.

These appellants maintain that such finding and judgment of the Supreme Court of Appeals of West Virginia is in violation of and contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, and also the provisions of Section 1, Article X of the Constitution of West Virginia, in that said four associations are not accorded equal protection of the laws, are discriminated against in favor of other taxpayers owning property classified in said Classification I, and appellants are unequally burdened; and that therefore their properties are not uniformly taxed with other properties in Classification I, or proportionately with properties properly placed in Classifications II, III and IV.

6. Chapter 11, Article 3, Section 1 of the Code of West Virginia, as interpreted by the Supreme Court of Appeals of West Virginia, in connection with Chapter 11, Article 3, Section 14-A, is invalid and, together with said last mentioned statute as interpreted by that said Court in upholding the action of the said State Tax Commissioner of West [fol. 435] Virginia in his interpretation thereof, constitute

discrimination against the said appellants herein, and are violative of their federal rights.

7. The said Supreme Court of Appeals of West Virginia erred and discriminated against these appellants, and by its holding and judgment violated their federal rights, in holding that the said above mentioned statutes were by the Legislature of West Virginia meant to be a discrimination against the appellants and other similar building and loan and savings and loan associations, and in holding that there was no discrimination or violation of appellants' federal rights shown, by reason of the appellants and others similarly situated being assessed at 30% higher than all other taxpayers in the same classification, so long as the appellants and all other similar building and loan and savings and loan associations throughout the State of West Virginia were equally treated as among themselves.

These appellants maintain, and will contend, that even though all building and loan and savings and loan associations in West Virginia were treated equally as between themselves by the Assessors of the State of West Virginia, at the direction of the State Tax Commissioner of West Virginia, yet if all other taxpayers in the same classification, as set forth by the Constitution and laws of the State of West Virginia, were allowed a 30% deduction from the true and actual values of their properties, that unless and until such deduction is given to these appellants there is actual and intentional discrimination shown, and their federal rights, as hereinabove stated, have been violated.

[fol. 436] *Parts of Record to be Printed*

The appellants believe that it will be necessary to print the entire transcript of the record, less, however, those parts as provided in paragraph 9 of Rule 13, to-wit, "all duplication, repetition of titles, and all obviously unimportant matter." In this latter category may be included those parts of the exhibits which were printed in the record used before the Supreme Court of Appeals of West Virginia, which exhibits were originally upon printed forms identical in form and manner, and contained, as filed in the case, many blank parts and pages, that a printing of one of such exhibits in full will be sufficient, and the printing of only the material parts of the other exhibits, without a repetition

of printing of the blank parts of the other exhibits, will be sufficient.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, Appellants, By J. Campbell Palmer, III, Their Counsel.

[fol. 436a] [File endorsement omitted].

[fol. 437] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—October 16, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing on the merits.

[fol. 438] Endorsed on Cover: Enter J. Campbell Palmer, III. File No. 48,853 West Virginia, Supreme Court of Appeals, Term No. 400. Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, Appellants, vs. George P. Alderson, State Tax Commissioner of West Virginia. Filed August 26, 1944. Term No. 400 O. T. 1944.

FILE COPY

FILED
AUG 26 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, AND EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellants,

vs.

GEORGE P. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA.

APPEAL FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA.

STATEMENT AS TO JURISDICTION.

W. ELLIOTT NEFFLEN,
J. CAMPBELL PALMER, III,
Counsel for Appellants.

KOONTZ & KOONTZ,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, AND EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellants,

vs.

GEORGE P. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA.

STATEMENT AS TO JURISDICTION.

The appellants below, and appellants here, having this day presented their petition for appeal, now file this their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final judgment in question and to exercise jurisdiction in this case.

I.

The Statutory Provision Believed to Sustain the Jurisdiction.

Section 237(a) of the Judicial Code, 28 U. S. C. A. Section 344(a), provides, in part:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error (appeal). The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

Without reciting at length in this part of the statement the numerous cases wherein this Court has decided that there is a federal question involved when there has been a systematic and deliberate undervaluation of the properties of many taxpayers by state officials, either pursuant to state law or upon their own volition, we set out hereinbelow briefly but a few of those in which the matter has been heard in the Supreme Court of the United States by means of direct appeal.

The cases set out hereinafter in the argument part of this statement are all upon a question similar to that presented here, and the Supreme Court of the United States has held innumerable times that a federal question is involved. See, *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 52 L. Ed. 78; *Coulter* v. *Louisville & N. R. Co.*, 196

U. S. 599, 49 L. Ed. 615; *Chicago B. & Q. Ry.* v. *Babcock*, 204 U. S. 585, 51 L. Ed. 636; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 62 L. Ed. 1154, writ of error to State Court, i. e. appeal.

The latest pronouncement of this Court was in the opinion decided May 29, 1944, in the cases of *International Harvester Company and the Indiana Mining and Manufacturing Company* v. *Wisconsin Department of Taxation*, 12 U. S. L. W. 4428.

Mr. Chief Justice Stone, in delivering the opinion of the Court, stated, in part, in the opening sentence of the opinion: "These cases come here on appeal under Section 237(a) of the Judicial Code, 28 U. S. C., Section 344(a), from judgments of the Supreme Court of Wisconsin, reviewing and sustaining assessments by appellee, the Wisconsin Department of Taxation, * * *."

Where the validity of the general laws of California, 1937, Act 2964, Section 10, as construed by California courts, was drawn in question on the ground of its being repugnant to the Constitution of the United States, a judgment of the Supreme Court of California was properly before the United States Supreme Court on appeal, under Section 344, Title 28, U. S. C.

II.

The Statute of the State, the Validity of which Is Involved.

The statute, the validity of which is involved, is Michie's Code of West Virginia, 1941, Chapter 11, Article 3, Section 14(a), as amended by Chapter 118, Acts of 1939, enacted by the Legislature of West Virginia, set out in full in the Appendix hereto, which in effect provides that the capital of every building and loan association or federal savings and loan association, as represented or evidenced by the investment shares and investment accounts, "shall

be assessed at its true and actual value according to the rules prescribed by this chapter," and "the real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain * * *." There is also involved the statute of West Virginia, which is Michie's Code of West Virginia, 1941, Chapter 11, Article 3, Section 1, the main and substantive part of which is as follows:

> "All property shall be assessed annually as of the first day of January, at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale * * *."

There is also involved the Constitution of West Virginia, Article X, Section 1, set out in full in the Appendix hereto, which provides, in substance:

> "* * * Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. *No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value.*" (Emphasis supplied.)

This said Article X, Section 1, known as the "Tax Limitation Amendment," was ratified by the people of West Virginia in November, 1932, and further provides for the property to be divided into four classifications, with a tax limitation or ceiling upon each class.

In Class I is personal property employed in agriculture, the products of agriculture, including live stock, owned

by the producer, and "money, notes, bonds, bills and accounts receivable, stocks, and other similar intangible personal property."

Class II includes "all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants."

Class III includes "all other property situated outside of municipalities."

Class IV includes "all other such property situated within municipalities."

There is also involved the 14th Amendment to the Constitution of the United States, Section 1 thereof, and specifically the last sentence, providing: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; now deny to any person within its jurisdiction the equal protection of the laws."

III.

The Administrative Orders Involved.

On June 24, 1941, George P. Alderson, State Tax Commissioner of West Virginia, wrote to each of the assessors of the fifty-five counties of the State of West Virginia concerning the method of determining the asessment of building and loan and savings and loan associations, and gave them definite instructions as to how they should arrive at the correct assessment (R. 276-277). He then further stated:

> "I further request and instruct you not to deviate from such method by way of discounts or in any other way or means which will produce different results or

assessments than those obtained by such method as shown by such sheets, as this method is in compliance with constitutional and statutory provisions of the law and assessments made in accordance therewith will likewise be made as directed by law."

IV.

Date of the Judgment or Decree Sought to Be Reviewed, and the Date upon which the Application for Appeal Is Presented.

The decision of the Supreme Court of Appeals of West Virginia was rendered in this case on February 22, 1944. Within the thirty day period required by law, that is, on the 21st day of March, 1944, these appellants filed a petition for a rehearing, and in the event that it should be refused, a stay of the judgment for ninety days.

On the 15th day of May, 1944, the petition for rehearing was refused, and a stay of the judgment for ninety days to permit the prosecution of this appeal was granted by said Court.

The petition for appeal herein was presented and filed on the 13th day of July, 1944.

A judgment of a State court becomes final for purposes of review in the United States Supreme Court in a case in which a petition for rehearing is entertained upon the date of the denial or other disposition of such petition. *Citizens Bank* v. *Opperman*, 249 U. S. 448, 63 L. Ed. 701.

V.

Statement Showing That the Nature of the Case and the Rulings of the Court Were Such as to Bring the Case within the Jurisdictional Provisions Relied upon.

A.

In 1932, the Tax Limitation Amendment to the Constitution of West Virginia was passed, which divided all prop-

erty in West Virginia, other than property of public utilities, the assessment of which is made by the Board of Public Works of the State of West Virginia, into four classes. 1939 Code of West Virginia, Chapter 11, Article 6, Sections 1, 11, 13, etc. Agricultural products, including live stock, bills, notes, money, accounts receivable, etc., were placed in Class I. Therefore, there is no controversy that the assets of building and loan associations such as the appellants were properly within Class I. For many years the Assessor of Kanawha County, West Virginia, as shown by the testimony of the Deputy Assessor in charge of this particular work, had systematically and faithfully ascertained the true and actual value of all of the property in Class I, located in Kanawha County, and as to building and loan associations, had then allowed a deduction of 30% in order to arrive at the correct assessed valuation of the personal property (R. 50). At R. 50-51, this Deputy Assessor testified that he believed that this 30% discount "would be the more equitable assessment."

At R. 55, it is shown that the only reason he assessed the property of these associations at the present figure is because he received specific directions so to do from the State Tax Commissioner's office, and that while he did not agree with those instructions, "I thought we had better probably do as he instructed."

The witness further testified (R. 56) that the deduction of 30% was in accordance with the method used in Kanawha County in assessing intangible personal property.

In stating how the various types of property in Class I were assessed, the witness stated the following method or plan was used:

> "Money is valued, of course, at 100%; accounts receivable are valued at about 70% unless they are installment accounts, and they are valued at approximately 65%.",

this being 65% of the book value shown on the face of them (R. 57).

He testified that live stock was valued at approximately 50% of the purchase price, which was ascertained by asking the farmer what he had paid for a plow or cattle or live stock, taking 50% of that value for assessment purposes (R. 57).

He further stated: "Notes are assessed at approximately 70%" (R. 57). Further that "Bonds are assessed at approximately 70% unless their market value is less. Then, of course, if the market value of bonds is less than 70% we generally factor them slightly under their market value."

That this 70% is of the face value (R. 57-58).

That this is the same system used throughout Kanawha County in all its magisterial districts, by all of the field deputies of the assessor, and is under the instructions of the assessor of that county (R. 58).

With reference to Class II property, it is assessed, according to the witness, at approximately 50% to 60% of the construction cost of the building. The land values are determined by localities (R. 58-59). In some districts the *percentage* is very low, and in others fairly high (R. 59). The 50% to 60% percentage is of the cost or replacement value. That is the method that is used in arriving at the true and actual value (R. 59). Property used exclusively for residential purposes, in Kanawha County, is assessed at a percentage of its cost price, varying from 80% in some districts to 25% in other districts (R. 60).

In Classes III and IV, real estate assessed values are determined as above stated for Class II. Automobiles are assessed at approximately 30% less than the Blue Book value. Gas wells are allowed a one-third deduction; and

merchandise, store goods and all equipment of business establishments are assessed at 60% of the book value or inventory (R. 62).

Household furniture is valued at a very low rate (R. 63).

B.

As above stated, for some years previous the said appellants had listed their property for assessment at the value thereof, and had deducted or discounted therefrom 30% of said value, which figure had been for some years accepted and used by the Assessor of Kanawha County as the true and actual value of said property for assessment purposes.

After the instructions of the said defendant herein, George P. Alderson, State Tax Commissioner, said Assessor of Kanawha County made a revised computation, as of January 24, 1941, of the assessed value of the property of each of the appellants, which revised assessment was, for Charleston Federal Savings & Loan Association, the sum of $921,180.00; for First Federal Savings & Loan Association, the sum of $249,080.00; for West Virginia Building and Loan Association, the sum of $69,490.00; and for Empire Savings & Loan Association, the sum of $273,880.00.

In accordance with the statutes of the State of West Virginia, each of the appellants filed a petition and protest with the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization of said county, and beginning July 17, 1941, and ending July 18, 1941, a hearing was had, and testimony taken, on said petition and protest.

As shown, beginning R. 41 and on pages 42-43, at the end of that hearing the said County Court, ex-officio Board

of Review and Equalization, made a finding and entered its orders thereon, a copy of which is in the Appendix hereto. That Court found that the assessed valuations as of January 1, 1941, made by the Assessor of Kanawha County, West Virginia, were for appellants in the amounts above stated; and further held that said sums "are *in excess of the true and actual values of the respective properties* of the said four protestants, respectively, and that the assessed valuations aforesaid of the said properties of the said protestants are *at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are therefore discriminatory and not uniform and equal,*". (Emphasis supplied).

Thereupon said Board, in said order (R. 43) ordered that the assessed valuations be reduced and fixed as follows: "the Charleston Federal Savings & Loan Association at the sum of $639,030.00, the First Federal Savings & Loan Association at the sum of $170,450.00, the West Virginia Building & Loan Association at the sum of $48,230.00, and the Empire Federal Savings & Loan Association at the sum of $189,600.00;" and ordered the assessed valuation of the properties of each of the protestants be placed on the property books of Kanawha County, West Virginia, for taxation purposes as of January 1, 1941, in those amounts.

On the 18th day of August, 1941, George P. Alderson, State Tax Commissioner, appealed to the Circuit Court of Kanawha County, West Virginia, from the said order of the County Court, alleging (R. 27) that the assessor had correctly assessed the properties of these four appellants "for the purpose of taxation at their true and actual values in compliance with Section 14 A, article 3, chapter 11, of the West Virginia Code * * * and further in compliance with a written instruction issued by the Tax Commissioner

to all county assessors under date of June 24, 1941, relative to the assessment of the properties of all financial institutions operating in the State of West Virginia * * *."

On the 23rd day of December, 1941, the Circuit Court of Kanawha County entered its opinion reversing the County Court of Kanawha County and reinstating the assessed values, as the Court said, "these being the amounts fixed and determined by the said Tax Commissioner and at his direction placed by the Assessor of Kanawha County, West Virginia, upon the property books for assessment purposes * * *."

The Court further held, in substance (the Court's opinion in full is found in the Appendix hereto):

> "The burden of appellee's argument seems to be discrimination because of the fact that the Assessor of Kanawha County assesses other species of property in Class I upon a different basis. As I view it, such argument would be tenable only in the event there was a different assessment of other properties of a like character, in this instance building and loan associations. *The fact that live stock, personal property of other genus and real estate may be assessed upon a certain percentage of its estimated true and actual value, is not in my opinion discriminatory so long as all building and loan associations or institutions of like character are assessed upon a uniform basis.*" (Emphasis supplied.)
>
> "The Courts have taken judicial notice of the long continued practice of assessors throughout the state to assess property, real and personal, at less than its true and actual value, varying in the different counties. If it be the policy of the state throughout its authorized officials to abandon this method of assessment and give literal application to the meaning of the terms 'true and actual value,' who is to gainsay them?"

A statutory appeal under Chapter 11, Article 3, Section 25, Michie's Code of West Virginia, 1941, as amended by

Chapter 41, Acts of the Legislature of West Virginia, 1943, from this final decree and order of the Circuit Court of Kanawha County, West Virginia, reversing the action of the County Court of Kanawha County, was taken to the Supreme Court of Appeals of West Virginia.

The Supreme Court of Appeals of West Virginia sustained the Circuit Court of Kanawha County upon the ground that the Legislature could subdivide any of the four classes set up in the Tax Limitation Amendment to the Constitution and prescribe methods for valuing any class of property therein, so long as that valuation was made uniform throughout the State, and that there was nothing discriminatory or unconstitutional in so doing.

That Supreme Court of Appeals of West Virginia stated that these appellants relied upon the case of *West Penn Power Co.* v. *Board of Review and Equalization*, 112 W. Va. 442, 164 S. E. 682, decided in June, 1932, in which it was held that in a West Virginia county, where the property of one taxpayer was taxed at full value and a discount given to all other property owners in the county, that this was discriminatory and unconstitutional, and the assessed valuation of the property of the one taxpayer must be reduced by the same percentage allowed all other taxpayers in that county.

The Supreme Court of Appeals stated that that decision has been based largely on *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. Ed. 340, which had been sustained by the Supreme Court of the United States by many other cases, among which were: *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499; *Louisville & Nashville Ry. Co.* v. *Greene*, 244 U. S 522; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350; *Bohler* v. *Calloway*, 267 U. S. 479; *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23; *Iowa-Des Moines National Bank* v. *Bennett*, 248 U. S. 239.

The Court went on to hold that "the force and weight of these decisions, as applied to the present controversy, is largely, if not entirely, nullified by the recent decision of the same Court (Supreme Court of the United States) in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254."

Upon petition for rehearing, these appellants cited to the Supreme Court of Appeals of West Virginia the then recently decided case of *Joseph E. Snowden, Petitioner*, v. *Edward J. Hughes, et al.*, decided January 18, 1944, Case No. 57, October Term 1943, 12 U. S. L. W. 4144, in which this Court stated, in part:

> "Another familiar example is the failure of state taxing officials to assess property for taxation on a uniform standard of valuation as required by the assessment laws. It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, By a Systematic Under-Valuation of the Property of Some Taxpayers and a Systematic Over-Valuation of the Property of Others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute. *Coulter* v. *Louisville & N. R. Co.*, 196 U. S. 599, 607, 609-10; *Chicago B. & Q. Ry. Co.* v. *Babcock*, 204 U. S. 585, 597; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353; *Southern Ry. Co.* v. *Watts*, 260 U. S. 519, 526. Such discrimination may also be shown to be purposeful, and hence a denial of equal protection, even though it is neither systematic nor long-continued. *Cf. McFarland v. American Sugar Co., supra.*" (P. 4146.) (Emphasis supplied.)

Note:

> "See also *Raymond* v. *Chicago Union Traction Co.* 207 U. S. 20, 36; *Sioux City Bridge Co.* v. *Dakota Co.*, 260 U. S. 441, 447; *Bohler* v. *Calloway*, 267 U. S. 479,

489; *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23, 25, 28; *cf. Great Northern Ry.* v. *Weeks*, 297 U. S. 135, 139."

The Court further stated:

"The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, *cf. McFarland* v. *American Sugar Co.*, 241 U. S. 79, 86-7, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself, *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-4."

Justice Frankfurter, in a concurring opinion, states:

"I am clear, therefore, that the action of the Canvassing Board taken, as the plaintiff himself acknowledges, in defiance of the duty of that Board under Illinois law, cannot be deemed the action of the State, *certainly not until the highest court of the State confirms such action and thereby makes it the law of the State.*" (Page 4148.) (Emphasis supplied.)

VI.

The Stage in the Proceedings in the Court of First Instance, and in the Appellate Court, at which, and the Manner in which, the Federal Questions Sought to Be Reviewed Were Raised, the Method of Raising Them, and the Way in which They Were Passed upon by the Court; the Rulings of the Court Thereon to Show That the Case Is Brought within the Statutory Provision Believed to Confer Jurisdiction on This Court.

The petitions and protests of each of the appellants made to the county Court of Kanawha County, ex-officio Board

of Review and Equalization, each contained, in paragraph 3, that the assessment as made by the assessor at the direction of the State Tax Commissioner, "is discriminatory, is not uniform and equal, is in violation of the provisions of the Constitution and amendments thereto of the State of West Virginia and the United States of America, particularly Section 1, Article X, of the Constitution of West Virginia, * * * and the 14th Amendment to the Constitution of the United States of America." (See, R. 34, 36, 38 and 40).

Counsel for the petitioners, at the beginning of the hearing before the said County Court, raised the same Federal questions in his opening statement to the Court (R. 47). Upon the ruling of the Circuit Court of Kanawha County, upon the appeal taken thereto, and in the objections and exceptions to said ruling, the petitioners, again in their third exception, raised the said question of discrimination and of violation of the provisions of the Constitution of West Virginia and the denial of equal protection of the laws and discrimination against the petitioners in violation of the Constitution of the United States (R. 310). In their petition for appeal to the Supreme Court of Appeals of West Virginia these petitioners again raised the question of discrimination and the denial of equal protection under Section 1 of the 14th Amendment to the Constitution of the United States, in their second question entitled "Discriminatory Assessment," beginning R. 11 and continuing through R. 15.

There is hereinabove set out more specifically exactly how the Federal question was raised and how it was passed upon by each of the three courts, and there is also set out specific quotations from the Record, with page numbers attached, to show that the rulings were such as to bring

it within the provisions conferring jurisdiction upon the Supreme Court of the United States.

VII.

Questions Presented for Decision.

It is respectfully submitted that a question is presented as to whether the decisions of the United States Supreme Court are in conflict, and a question whether there has been discrimination and a denial of equal protection under the laws to the appellants, and a specific question of the validity of a statute of the State of West Virginia, on the ground of its being repugnant to the Constitution and laws of the United States, and a decision in favor of its validity by the highest court of that State.

The West Virginia Tax Limitation Amendment, concerning the validity and constitutionality of which there is no question, divided property into four classifications. The State Tax Commissioner arbitrarily, and we contend discriminatorily, decided that he could redivide Class I of that Tax Limitation Amendment into subdivisions and tax certain of the properties of that Class I at a higher rate than other properties, and that he was permitted and required so to do by virtue of the statute of West Virginia, and we contend, in violation of the Constitution of West Virginia, which provides that taxation shall be equal and uniform; and that the Supreme Court of Appeals of West Virginia, in upholding the right of the Tax Commissioner so to do, and in giving approval to his interpretation of said statute, has caused the appellants to be discriminated against, and for them to be deprived of equal protection under the laws, as provided by Section 1 of the 14th Amendment to the Constitution of the United States, and to be deprived of their property without due process of the law.

As will be set out hereinafter more fully, this Court has consistently held over a long period of years that a systematic under-valuation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute, is purposeful and a denial of equal protection under the laws; that a statute of a State in violation of its constitution, purporting to permit such discrimination, or an interpretation given thereto by an official of the State, sustained by the highest court of that State, thereby making it the law of that State, is equally discriminatory. However, the precise question as to whether one certain group of taxpayers who are incorporated in a larger group by the Constitution of the State can be singled out for such discrimination, and have that held to be valid and lawful, we respectfully contend, has not yet been passed upon by this Court, and that this, together with the question of whether the decisions of the Supreme Court of the United States are in conflict, are the substantive questions which are and should be decided by the Supreme Court of the United States.

VIII.

Statement and Argument of the Grounds upon which it Is Contended That the Questions Involved Are Substantive.

A.

We have hereinabove stated the questions and the facts.

The first question, as shown above, is whether there is a conflict in the decisions of the Supreme Court of the United States, as there has been held to be by the Supreme Court of Appeals of West Virginia.

The Supreme Court of Appeals of West Virginia, at page 14 of its typewritten opinion, as we have above set forth herein, stated that the appellants strongly relied upon the case of *West Penn Power Co.* v. *Board of Review and Equalization,* 112 W. Va. 442, 164 S. E. 862. That case was decided mainly upon the basis of *Sioux City Bridge Co.* v. *Dakota County,* 260 U. S. 441, 67 L. Ed. 340, with the Court reciting that the latter case held where a taxpayer's property is taxed at 100% of its true and actual value, it is his right to have his assessment reduced to the percentage of values at which other properties of the same class in the same governmental unit of the United States are taxed, "even though the statute requires that all property be taxed at its true and actual value." The Supreme Court of Appeals of West Virginia was correct in stating that the appellants relied upon the *West Penn* case and upon the decisions of the Supreme Court of the United States which were therein cited and relied upon by the Court.

The Supreme Court of Appeals of West Virginia, in substance, frowns now upon the decision in the *West Penn* case, and states directly, at page 15 of its opinion, that the cases of the United States Supreme Court relied upon therein are in substance overruled by *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning,* 310 U. S. 362, 84 L. Ed. 1254.

We respectfully submit that that case last cited does not overrule the former decisions of the Supreme Court of the United States upon the point in question.

As Mr. Justice Frankfurter carefully set out in the opinion:

> "All Tennessee property is subject to such a tax; but there are two schemes of procedure for making assessments, one for public service corporations and

one for other taxpayers. As to ordinary property the task of valuation rests upon officials of the various counties. For public service corporations the assessments must be made by the Railroad and Public Utilities Commission, which is commanded to ascertain the 'actual cash value' of corporate property situated in Tennessee."

This same scheme of taxation applies in West Virginia, as hereinabove stated, whereby the properties of public utilities are assessed for taxation by the Board of Public Works, and other property is assessed by the assessors in each county. In the *Nashville* case the question there raised was whether there was discrimination by virtue of the taxation of the public utilities by the board created for that purpose at one valuation and taxation of properties by the county assessors at a lower valuation. It was there stated that this differentiation in valuation by the two different methods of taxation had continued for more than forty years. The Court, through Mr. Justice Frankfurter, then stated:

"It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrimination. Its asserted grievance is common to the whole class. We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. (Citing Raymond *v.* Chicago Union Traction Co.; Sunday Lake Iron Co. *v.* Wakefield; Sioux City Bridge Co. *v.* Dakota County; Bohler *v.* Callaway; Cumberland Coal Co. *v.* Board of Revision; Iowa-Des Moines Nat. Bank *v.* Bennett.) All these cases are inapposite. None denied power to a state to apply different yardsticks to different classes of property. Equally irrelevant are those cases in which this Court, because of the nature of the litigation,

was construing the uniformity clause of a state constitution, and was not applying the Fourteenth Amendment."

Therefore, the problem presented in that case was entirely different from the problem in the instant case, and we respectfully contend that the Supreme Court of the United States itself distinctly held that they were not overruling those cases which we contend apply to the instant situation.

We further respectfully contend that our case is directly within the exception noted by Mr. Justice Frankfurter, in that the Constitution of West Virginia provides for certain taxpayers to be in Class I, and states that all taxation shall be equal and uniform, and that when a discrimination, uniform and systematic, is made against a taxpayer within that Class I in favor of other taxpayers within that class, that this is unlawful and unconstitutional.

It is further respectfully submitted that the Supreme Court of the United States, in *Snowden* v. *Hughes*, 12 U. S. L. W. 4144, hereinabove cited, specifically held, in the opinion by Mr. Justice Stone, and in the concurring opinion by Mr. Justice Frankfurter, that the cases cited by the Supreme Court of Appeals of West Virginia, on page 15 of its opinion, as being overruled, were specifically still in effect.

B.

The second substantive proposition is the uniform and equal taxation of all property in proportion to its value, as required by the Constitution of West Virginia and the 14th Amendment to the Constitution of the United States, and that any statute passed or any interpretation thereof given approval by the highest court of the State which permits or allows the assessment of the property of some owners for taxation purposes at its true and actual value, and

the property of other owners at a substantial discount therefrom, by an admitted, intentional, systematic and customary practice, is unconstitutional, arbitrary and discriminatory, and a deprivation of equal protection under the laws, and the owner of such property who is so discriminated against is entitled to have his assessment reduced to the common level of those whose property is assessed lower, and a refusal so to do is violative of the 14th Amendment to the Constitution of the United States.

Under Point V. A hereinabove is set out at some length testimony showing that for some years prior the Assessor of Kanawha County had always valued the property of these appellants by taking its value and subtracting 30% thereof; that this was in accordance with a plan used with relation to all other properties in Class I, and, in fact, used substantially the same plan for properties in Classes II, III, and IV; that he only changed from this plan at the specific direction of the defendant, the State Tax Commissioner, and that he disagreed with the State Tax Commissioner's order in so doing; that he felt that the only equitable plan was to give these appellants the same 30% discount that all other taxpayers in Class I received.

Upon appeal to the County Court of Kanawha County, ex-officio Board of Review and Equalization, in their opinion they specifically found "that the assessed valuations aforesaid of the said properties of the said petitioners and protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are discriminatory and not uniform and equal." We respectfully submit that therefore these cases come within all of the rules laid down by this Court whereby relief is granted only if it is shown that there is a systematic under-valuation of the property of some taxpay-

ers and a systematic over-valuation of the property of others, which therefore shows a purposeful discrimination.

We believe that the Circuit Court of Kanawha County, in its opinion, stated the crux of the question. That court stated that there was no discrimination shown by reason of the fact that certain of the taxpayers in Class I were assessed upon a reduced value for their properties so long as all building and loan associations or institutions of like character are assessed upon a uniform valuation. In other words, that Class I could be subdivided by arbitrary decision of the Tax Commissioner, and unequal tax assessments made which would not be discriminatory so long as they were equally applied to each of the two classes created by decision of the Tax Commissioner.

While we must respectfully disagree most strongly with this assertion and opinion of the Circuit Court of Kanawha County, we nevertheless must further disagree with it because there is no evidence in the Record to show that such assessments on building and loan associations were made uniform throughout the State of West Virginia, but the evidence only discloses that there was discrimination in Kanawha County as concerns these apppellants.

We quote but two relevant parts of decisions from the Supreme Court of the United States, and for the purpose of brevity merely cite other decisions which are among the multitudinous decisions sustaining our contention.

In *Sioux City Bridge Co.* v. *Dakota County*, *supra*, the Supreme Court of the United States stated:

> "This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle

that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska Supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

In the case of *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 61 L. Ed. 1280, syllabus 7 of that case states:

"The requirement of Ky. Const., Sec. 172, that all property 'shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale,' will not prevent injunctive relief against steps looking to the enforcement of certain state and local so-called franchise taxes, based upon an assessment of the intangible property of a public service corporation by the State Board of Valuation and Assessment at not more than its fair cash value, *where the local assessing officers charged with valuing other classes of property systematically undervalue such property*, since to apply to one class of property the standard of fair cash value, systematically departed from with respect to other classes of property, would frustrate the principal object of that section, which, in view of the provisions of Sec. 171 and 174, requiring uniformity of taxation in proportion to value, and an identical rate as between corporate and individual property, must be deemed to be equal taxation." (Italics suppplied.)

In the *West Penn case* above cited, syllabus 2 thereof, which was law in West Virginia, holds:

"Under the Fourteenth Amendment of the Constitution of the United States it is the right of a taxpayer whose property is taxed at one hundred per centum of its true and actual value to have his assessment reduced to the percentage of that value at which other

properties of the same class in the same governmental unit of taxation are taxed, even though the statute requires that all property be taxed at its true and actual value."

In *Cummings* v. *Merchants' National Bank of Toledo*, 101 U. S. 157, 25 L. Ed. 903, Mr. Justice Miller stated:

"Independently of this Statute, however, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

See also:

Raymond v. *Chicago Union Traction Co.*, 207 U. S. 20, 52 L. Ed. 78;
Bohler v. *Callaway*, 267 U. S. 479, 69 L. Ed. 745;
Cumberland Coal Co. v. *Board of Revision*, 284 U. S. 23, 76 L. Ed. 146;
Booneville National Bank v. *Schlotzhauer* (Mo.), 298 S. W. 732, 55 A. L. R. 489;
Knox v. *Southern Paper Co.* (Miss.), 108 So. 288;
Randals v. *State* (Tex.), 15 S. W. (2d) 715;
Pacific Telephone Co. v. *W.* (Wash.), 34 P. (2d) 751;
Peninsula Power Co. v. *W. T. Co.* (Wis.), 218 N. W. 371;
People v. *G. T. W. R. Co.*, 357 Ill. 493, 192 N. E. 645;
3 A. L. R. 1317, Note;
28 A. L. R. 983, Note;
55 A. L. R. 503, Note.

Conclusion.

We therefore respectfully submit that the decision of the Supreme Court of Appeals of West Virginia affirming the decision of the Circuit Court of Kanawha County, West Virginia, should be reversed, and that the finding and order of the County Court of Kanawha County, ex-officio Board of Review and Equalization, should be reinstated, and that an appeal should be allowed in order that this may be done.

Respectfully submitted,

KOONTZ & KOONTZ,
W. ELLIOTT NEFFLEN,
J. CAMPBELL PALMER, III,
Counsel of Appellants.

APPENDIX.

BEFORE THE COUNTY COURT OF KANAWHA COUNTY, WEST VIRGINIA, EX-OFFICIO BOARD OF REVIEW AND EQUALIZATION.

In the Matters of Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, *Petitioners and Protestants;*

And, also,

Empire Savings and Loan Company and Capital Building and Loan Association, *Petitioners and Protestants.*

Assessment for the purposes of taxation as of January 1, 1941.

On the 17th day of July, 1941, came Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, and West Virginia Building & Loan Association, petitioners and protestants, by their counsel, Koontz & Koontz and W. Elliott Nefflen, and also came the State of West Virginia and George P. Alderson, State Tax Commissioner of West Virginia, by their counsel, Clarence W. Meadows, Attorney General of West Virginia, by W. Holt Wooddell, Assistant Attorney General of West Virginia, and Howard J. Gibson, and thereupon the three protestants respectively tendered their separate written petitions and protests, and upon motion the same, and each of them, were thereupon filed, the said protestants each claiming that the respective assessed valuations of their properties, as of January 1, 1941, as shown by the property books of Kanawha County, West Virginia, are in excess of their true and actual values, and furthermore proportionately higher than the assessment valuation of other properties of other owners and taxpayers in Kanawha County, and therefore not uniform and equal, all of which is more fully and at large set up in each of said petitions and protests; and thereupon evidence, consisting of the testimony of witnesses and the filing of exhibits, was adduced on behalf of said

protestants and the State of West Virginia before Reuel E. Sherwood, a shorthand reporter, and completed on July 18, 1941. On July 18, 1941, the Empire Federal Savings & Loan Association, by its counsel, Koontz & Koontz and W. Elliott Nefflen, tendered its written petition and protest, and upon motion said written petition and protest was ordered filed, the said Empire Federal Savings & Loan Association adopting in its behalf the evidence adduced on behalf of the other three petitioners and protestants aforesaid; and after all of the evidence had been adduced on behalf of the other three petitioners and protestants and the State of West Virginia, which said evidence, consisting of the testimony of witnesses and exhibits, taken and certified by Reuel E. Sherwood, shorthand reporter, is hereby made a part of the record herein, and upon consideration of all of which, the County Court of Kanawha County, West Virginia, sitting as the Board of Review and Equalization for said Kanawha County, is of the opinion, and doth hereby find, that the assessed valuations, as of January 1, 1941, made by the Assessor of Kanawha County, West Virginia, as shown on the property books of Kanawha County, West Virginia, which said property books for the current year, commencing January 1, 1941, have been submitted by the Assessor of Kanawha County to, and are now before, this County Court, sitting as the Board of Review and Equalization, of the property of the Charleston Federal Savings & Loan Association, in the sum of $921,180.00, of the property of the First Federal Savings & Loan Association, in the sum of $249,080.00, of the property of the West Virginia Building & Loan Association, in the sum of $69,490.00, and of the property of the Empire Federal Savings & Loan Association, in the sum of $273,880.00, are in excess of the true and actual values of the respective properties of the said four protestants, respectively, and that the assessed valuations aforesaid of the said properties of the said petitioners and protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are discriminatory and not uniform and equal, and thereupon the said County Court of Kanawha County, sitting as the Board of Review and Equalization, is of the opinion to,

and doth hereby, order that the assessed valuations, respectively, as of January 1, 1941, of the said four petitioners and protestants be, and the same are hereby reduced and fixed, as follows: the Charleston Federal Savings & Loan Association at the sum of $639,030.00, the First Federal Savings & Loan Association at the sum of $170,450.00, the West Virginia Building & Loan Association at the sum of $48,230.00, and the Empire Federal Savings & Loan Association at the sum of $189,600.00; and it is hereby further ordered and directed that the assessed valuation of the properties of each of said four protestants as fixed by this County Court, sitting as the Board of Review and Equalization of Kanawha County, be placed on the property books of Kanawha County, West Virginia, for taxation purposes as of January 1, 1941.

And also on the 18th day of July, 1941, the Empire Savings & Loan Company, by James Kay Thomas, its attorney, filed its written petition and protest, and also the Capitol Building & Loan Association, by Robert Watt, its Secretary-Treasurer, filed its written petition and protest, claiming that the assessed valuations of their respective properties, as of January 1, 1941, as shown by the property books of Kanawha County, West Virginia, are in excess of their true and actual values and proportionately higher than the assessed valuations of properties of other owners and taxpayers in Kanawha County, and therefore discriminatory and not uniform and equal, and asked that upon the evidence adduced in the matters of Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, be considered in connection with their two separate petitions and protests; and the County Court of Kanawha County, West Virginia, sitting as the Board of Review and Equalization for said Kanawha County, is of the opinion, and doth hereby find, that the assessed valuations as of January 1, 1941, made by the Assessor of Kanawha County, West Virginia, as shown on the property books of Kanawha County, West Virginia, which said property books for the current year, commencing January 1, 1941, have been submitted by the said Assessor of Kanawha County to, and are now before

this County Court, sitting as the Board of Review and Equalization, of the property of Empire Savings & Loan Company in the sum of $300,040.00, and of the property of Capitol Building & Loan Association in the sum of $429,020.00, are in excess of the true and actual values of the respective properties of said last named two protestants, respectively, and that the assessed valuations aforesaid of the said properties of the said two protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are therefore discriminatory and not uniform and equal, and thereupon the said County Court of Kanawha County, sitting as the Board of Review and Equalization for said county, is of the opinion to, and doth hereby order, that the assessed valuation as of January 1, 1941, of Empire Savings & Loan Company be, and the same is hereby, reduced and fixed at the sum of $210,000.00, and the assessed valuation as of January 1, 1941, of Capitol Building & Loan Association be, and the same is hereby, reduced and fixed at the sum of $300,300.00; and it is hereby further ordered and directed that the assessed valuations of the properties of each of said two protestants as fixed by this County Court, sitting as the Board of Review and Equalization of Kanawha County, be placed on the property books of Kanawha County, West Virginia, for taxation purposes as of January 1, 1941.

Enter this 18th day of July, 1941.

County Court of Kanawha County, West Virginia,
Ex-Officio Board of Review and Equalization,
—— —— President; —— —— Commissioner;
—— —— Commissioner.

Appeals.

George P. Alderson, *State Tax Commissioner,*

vs.

County Court of Kanawha County Sitting as a Board of Equalization and Review.

In the Matter of Tax Assessments against Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, Empire Federal Savings & Loan Association, Empire Savings & Loan Company and Capitol Building & Loan Association.

This cause came on to be heard upon the petition of George P. Alderson, State Tax Commissioner of the State of West Virginia, praying for an appeal from the order and finding of the County Court of Kanawha County, West Virginia, ex-officio Board of Review and Equalization in and for Kanawha County, West Virginia, herein referred to as Board of Review and Equalization, reducing the valuations, respectively, fixed upon the properties of Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, by the Assessor of Kanawha County, West Virginia, the said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association being represented by their counsel, Koontz & Koontz and W. Elliott Nefflen, and said Empire Savings & Loan Company, by its counsel, James Kay Thomas, and the Capitol Building & Loan Association by its counsel, Koontz & Koontz and W. Elliott Nefflen, and the said George P. Alderson, State Tax Commissioner as aforesaid, being represented by his counsel, W. Holt Wooddell, Assistant Attorney General of West Virginia, and

Howard J. Gibson; and upon the evidence, exhibits, records and papers taken and filed in the proceedings before the Board of Review and Equalization in and for Kanawha County, West Virginia, as certified by said Board.

Thereupon, by agreement between said Howard J. Gibson, counsel for the State Tax Commissioner as aforesaid, James Kay Thomas, counsel for the Empire Savings & Loan Association, and W. Elliott Nefflen, of counsel for the Capitol Building & Loan Association, the appeal as to Empire Savings & Loan Company and the Capitol Building & Loan Association, and the matters of law and fact arising thereon, are held in abeyance in status quo, on the open docket, and this cause came on to be heard only as to the said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, upon the matters of law and fact arising upon the record and upon the evidence and exhibits so certified by said Board of Review and Equalization in and for the said County of Kanawha, and was duly argued by counsel for the appellant, said George P. Alderson, State Tax Commissioner as aforesaid, and counsel for the respondents, said four associations last named and mentioned. Upon consideration of the evidence, exhibits and records so certified by the said Board of Review and Equalization, in and for Kanawha County, West Virginia, and of the arguments of counsel thereon, the Court is of the opinion to and doth find that the action of the said Board of Review and Equalization in and for the said Kanawha County in reducing the valuations, respectively, of the properties of the Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, be and the same is hereby reversed, and it is adjudged, ordered and decreed that the assessments of the valuations of the properties of said four associations be and the same hereby are restored to the amounts fixed by the Assessor of said Kanawha County, as directed to be made by the said Tax Commissioner, said assessments being the true and actual values of

the respective properties of the four associations, respectively, as of January 1, 1941, as follows, to-wit:

Charleston Federal Savings & Loan Association	$921,180.00
First Federal Savings & Loan Association	249,080.00
West Virginia Building & Loan Association	69,490.00
Empire Federal Savings & Loan Association	273,880.00

these being the amounts fixed and determined by the said Tax Commissioner, and at his direction placed by the Assessor of Kanawha County, West Virginia, upon the property books for assessment purposes in and for the said County of Kanawha, State of West Virginia, for the tax year commencing January 1, 1941; and the opinion of this Court in so finding and in reversing the action of the said Board of Review and Equalization in and for said Kanawha County, is as follows:

"Following the decision of the Supreme Court of Appeals in the case of Charleston Federal Savings and Loan Association, et al. v. James, 120 W. Va. 781, the Legislature by Chapter 118 of the Acts of 1939, added a new section, 14-A, to Article 3 of Chapter 11 of the Code, providing expressly for the assessment of building and loan associations.

"The State Tax Commissioner evolved a formula for the assessment of such bodies, the expressed intent of such being to 'produce uniform and equal assessment and taxation of the properties of all such institutions and corporations throughout the state.' It is axiomatic that the Courts pay great respect to the construction by administrative agencies of the state to statutes coming within the purview of their functions. In the words of the minority opinion in the case of Loan Association v. James, 'Years of administrative acquiescence and effectuation' should not be supplanted by some other theory. We have here a situation of 'administrative effectuation' of a new statute by the state agency charged with its enforcement, and unless the same is shown to be conclusively arbitrary and wholly wrong in theory, it will not be disturbed; and upon the record here I cannot find such to be the case.

"The burden of appellee's argument seems to be discrimination because of the fact that the assessor of Kanawha County assesses other species of property in Class I upon a different basis. As I view it, such argument would be tenable only in the event there was a different assessment of other properties of a like character, in this instance building and loan associations. The fact that live stock, personal property of other genus and real estate may be assessed upon a certain percentage of its estimated true and actual value, is not in my opinion discriminatory so long as all building and loan associations or institutions of like character are assessed upon a uniform basis.

"The Courts have taken judicial notice of the long continued practice of assessors throughout the state to assess property, real and personal, at less than its true and actual value, varying in the different counties. If it be the policy of the state throughout its authorized officials to abandon this method of assessment and give literal application to the meaning of the terms 'true and actual value,' who is to gainsay them?

"For the reasons herein briefly outlined, the action of the County Court of Kanawha County sitting as a Board of Review and Equalization in assessing the properties of the appellees will be reversed and the assessment restored to that directed to be made by the State Tax Commissioner."

It is further adjudged, ordered and decreed that the costs of this appeal be charged to the said four associations last above named.

Thereupon, the said four associations, namely, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, jointly and severally, objected and excepted to the opinion, finding, ruling and judgment of the Court, the grounds of their objections and exceptions being:

First: That the finding and judgment of the Court are contrary to the law and the evidence;

Second: That the Court erred in finding that the valuations, as determined by the State Tax Commissioner, are

the true and actual values, that the valuation of the property of the Charleston Federal Savings & Loan Association, is the sum of $921,180.00; First Federal Savings and Loan Association. the sum of $249,080.00; West Virginia Building & Loan Association, the sum of $69,490.00; and Empire Federal Savings & Loan Association, the sum of $273,880.00. Such valuations of the properties of said four associations, respectively, as being the true and actual values thereof, respectively, are contrary to the evidence.

Third: That the Court erred in finding that, although other personal property placed in Classification I, as provided by Section 1, Article X, of the Constitution of West Virginia (that being the same class in which the properties of building and loan and savings and loan associations are placed for taxation purposes) may be assessed at a lower valuation than the true and actual value, namely, upon a certain percentage of the true and actual value thereof, such fact is not discriminatory against these said four associations. Such finding and judgment of the Court are in violation of and contrary to the provisions of Section 1, of the Fourteenth Amendment to the Constitution of the United States of America, and also the provisions of Section 1, Article X, of the Constitution of West Virginia, in that said four associations are not accorded the equal protection of the laws, are discriminated against in favor of other taxpayers owning property placed in Classification I as provided by Section 1, Article X, of the Constitution of West Virginia, and are unequally burdened, and, therefore, their properties are not uniformly taxed along with other properties in Classification I or with properties placed in the other classifications, namely, Classification II, Classification III and Classification IV.

The said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, having indicated their desire to apply to the Supreme Court of Appeals of West Virginia for an appeal from, and writ of error, and supersedeas to, said judgment and decree, on their motion by their counsel, the effect of this decree and order is suspended for a period of

ninety days from this date upon the said Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, or any one of them, or someone for them, entering into a bond before the Clerk of this Court, with sureties approved by the Clerk of this Court, in the penalty of $100.00, in the form and upon the conditions prescribed by law.

No. 9501.

IN RE: TAX ASSESSMENTS AGAINST CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING AND LOAN ASSOCIATION AND EMPIRE SAVINGS & LOAN ASSOCIATION.

Kanawha County. Affirmed.

Fox, Judge:

1. "The legislature has power to prescribe the method by which the valuation of any class of property may be ascertained, and, where the value of the same class of property is ascertained throughout the state in the same manner, such valuation can not be regarded as unconstitutional for lack of uniformity or equality." *Charleston & Southside Bridge Co. v. County Court*, 41 W.Va. 658, Pt. 2, Syl.

2. Under Section 1, Article X of the Constitution of West Virginia, the legislature has power to direct by law the method of assessment of all classes and types of property, and to apply different methods to different types of property, even though included in the same constitutional classification as respects the rate of levies which may be laid thereon.

3. To entitle a complaining taxpayer to relief under the "equal and uniform" provision of Section 1, Article X of the Constitution of West Virginia, there must be a clear showing of discrimination against him in the assessment of the same type of property. Such discrimination is not established where the showing is only that other property of

a different type is assessed at less than its apparent or face value, through a process of estimation, and in a good faith effort to arrive at the true and actual value thereof.

Fox, Judge:

The appellants, Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association, and Empire Federal Savings & Loan Association, complain of a final order of the Circuit Court of Kanawha County, entered on the 23rd day of December, 1941, fixing the 1941 assessment for tax purposes of the intangible property owned by them, respectively. Their appeal is prosecuted under the provisions of Code, 11-3-25, as amended by Chapter 41, Acts of the Legislature, Regular Session 1933.

The Assessor of Kanawha County, following instructions of the State Tax Commissioner, made the following assessments of the intangible property of the appellants, taxable in said county, for the year 1941: Charleston Federal Savings & Loan Association, $921,180; First Federal Savings & Loan Association $249,080; West Virginia Building & Loan Association $69,490; and Empire Federal Savings & Loan Association $273,880. On protest filed before the county court of said county, acting as a Board of Review and Equalization, under the provisions of Article 3, Chapter 41, Acts Regular Session, 1933, a hearing was had before said board, which resulted in an order reducing said assessments approximately thirty per cent, and they were fixed as follows: Charleston Federal Savings & Loan Association, $639,030; First Federal Savings & Loan Association, $170,450; West Virginia Building & Loan Association, $48,230; and Empire Federal Savings & Loan Association, $189,600. These reductions appear to have been made solely on the theory that other property of the same class, in the same taxing district, was assessed at approximately seventy per cent of its true and actual value, and that the assessments made by the assessor discriminated against protestants. No contention has ever been made that the assessments of the property of the appellants, made by the assessor, were in excess of the true and actual value thereof.

The State Tax Commissioner prosecuted an appeal from the action of the Board of Review and Equalization to the Circuit Court of Kanawha County, and on December 23, 1941, that court entered an order reversing the action of said board and fixing the assessments in question at the same amounts as those originally made by the assessor, from which action of the circuit court we granted this appeal.

The property of the appellants, the assessment of which is here involved is Class I property, as defined by Article 8 of Chapter 38, Acts Regular Session, 1933, and carries an initial tax rate of fifty cents on each one hundred dollar valuation. This statutory classification was made under Section 1, Article X of our Constitution, the pertinent provisions of which are:

> "Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon * * *."

In connection with the constitutional provision quoted above, it is well to keep in mind the general provisions of our statute, Code, 11-3-1, relating to the assessment of property of all classes. These are:

> "All property shall be assessed annually as of the first day of January at its true and actual value: that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which

> is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, * * *"

Questions affecting the assessment of the property of building and loan associations have received the attention of the courts and the legislature in recent years. Prior to the adoption of the tax limitation amendment, (Section 1 of Article X of the Constitution) and enabling statutes enacted thereunder, the property of building and loan associations was not assessed for tax purposes to the association itself, but investments therein were assessed to individual firm or corporate stockholders, following the decison of this Court in *Ohio Building and Loan Company* v. *County Court*, 42 W. Va. 818, 26 S. E. 203. However, in the later case of *Charleston Federal Building & Loan Association* v. *James*, 120 W. Va. 781, 200 S. E. 845, decided on December 8, 1938, it was held that, "Both state and federal building and loan associations are incorporated companies within the meaning of Code, 11-3-12, and are corporations within the meaning of Code, 11-3-13. Therefore, their intangible and other personal property is subject to taxation."

The legislature convened in regular session in January, 1939, and was charged with knowledge of the case last cited above when it enacted Chapter 118 of the Acts of that session, now carried in Michie's Code, 1943, as Section 14a, Article 3, Chapter 11. That section is a comprehensive one, and covers in detail all phases of the assessment of the property of building and loan and federal savings and loan associations. We note the first paragraph of the section, which reads as follows:

> "The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such as-

sociation is located; Provided, however, That such shares and such accounts held by the United States government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources."

Paragraphs 2 and 3 of the section go into further detail as to the duties of the officials of such associations, the assessment of its real estate, and other details not necessary to consider here.

We do not understand that appellants question either the intent or the power of the legislature to fix the methods of assessment of the particular type of property owned by building and loan and federal savings and loan associations. The power of the Legislature to enact such a statute seems clear, and has been exercised in a number of instances. For example, Code, 11-6, as amended, covers the assessment of the property of public service corporations; Code, 11-8-12 and 13, prescribes how the property of other corporations shall be assessed; Section 14 of the same article, as amended by Chapter 40, Acts Regular Session, 1933, provides for the assessment of the property of banking institutions; Section 15, as amended by Chapter 40, Acts Regular Session, 1933, covers the assessment of the property used in trade or business by natural persons. Therefore, when the legislature enacted Chapter 118 of the Acts of 1939, it only added to existing statutes covering the assessment of various types of property, and created no innovation on former practices. Even if it had done so, Section 1, Article X of the Constitution gives the legislature power to direct how the value of any class of property shall be ascertained, and this power has been expressly upheld by this Court

in *Charleston & Southside Bridge Co.* v. *Kanawha County Court*, 41 W. Va. 658, 24 S. E. 1002.

But we do not understand the appellants to contend that, admitting the power and efficacy of the legislative enactment of 1939, the same cannot be administered as directed, where to do so would discriminate against owners of other property of the same class in the same taxing district. This in reality is the paramount question presented on this appeal.

Appellants have produced testimony tending to show that other classes of property, such as real estate, oil and gas properties, automobiles and household goods are assessed at less than their true and actual value in Kanawha County. We think this testimony must be disregarded. The "equal and uniform" provision of our Constitution "means merely that as to classes of property, business or income there shall be uniformity of taxation." *Christopher* v. *James*, 122 W. Va. 665, 12 S. E. 2d 813, 816. See also *Charleston & Southside Bridge Co.* v. *County Court, supra;* In re Hancock County *Federal Savings & Loan Association*, 125 W. Va. —, 25 S. E. 2d 543. But they also introduce evidence which shows the manner in which intangible personal property such as notes, accounts and certain types of bonds, as well as other types of Class I property are assessed. It is important at this point to ascertain just how these assessments are made, and, fortunately, we have the testimony of the chief deputy of the Assessor of Kanawha County, whose statement is clear and explicit as to the methods of assessment followed. After stating that live stock, property employed in and products of agriculture, money, notes, accounts receivable, and bonds other than government, state and municipal, and shares of building and loan associations are treated as Class I property, his examination follows:

> "Q. In issuing your instructions to your field deputies will you state how you instruct them to value the various types of property which you state are in Class 1? What method or plan is used?
>
> "A. Money is valued, of course, at 100%; accounts receivable are valued at about 70% unless they are

installment accounts, and they are valued at approximately 65%.

"Q. You mean installment accounts are valued at 65%?

"A. Yes.

"Q. You mean 65% of their book value or the value shown on the face?

"A. Yes, the book values shown on the face of them.

"Q. How about other personal property such as livestock and agriculture products?

"A. Livestock is valued *as* approximately 50% of the purchase value.

"Q. How do you ascertain that purchase value in your instructions to your field deputies?

"A. By asking the farmer what he paid for a plow or cattle *of* livestock, and also using their own judgment.

"Q. How about notes?

"A. Notes are assessed at approximately 70%.

"Q. How about bonds?

"A. Bonds are assessed at approximately 70% unless their market value is less. Then, of course, if the market value of bonds is less than 70% we generally factor them slightly under their market value.

"Q. But generally you take 70% of the face value?

"A. That is the usual general procedure, yes, sir.

"Q. Is that same system used throughout Kanawha County in all its magisterial districts by all of your filed deputies?

"A. Yes, sir.

"Q. Is that done under your supervision?

"A. Yes, sir.

"Q. From whom do you receive your instructions?

"A. From Mr. Abbot, the Assessor of Kanawha County."

There is also testimony showing that the assets of certain loan companies, shown by the record to be commonly called "Small Loan Companies", as distinguished from commercial banks and trust companies are assessed at figures running from eighty-five to eighty-eight per cent of their face value. There is no showing as to the method

employed in the assessment of the assets of trust companies and commercial banks, and we assume such assessments are made as directed by Code, 11-3-14, as amended by Chapter 40 Acts Regular Session, 1933. The testimony shows that the assessor in fixing the value of Class I property, employed a uniform and systematic plan as to the different types of property included in the general Class I classification. Therefore, no question of error of judgment is involved. What the assessor did was intentional and followed a preconcerted plan, and, this being true, is discrimination against the appellants clearly shown? Money is assessed at its face value, as are the assets of commercial banks, and as to them it cannot be claimed there is any discrimination one over the other, or against the appellants. It may be claimed that the method employed in the assessment of loan companies is discriminatory, but to sustain that claim appellants would have to concede that the securities held by such loan companies are of the same type, and as well secured as their own. That loan companies of the class mentioned are engaged in a business different from, and involving greater risk than that in which building and loan and federal savings and loan associations are engaged is well known and will not, we think, be disputed. We run into a situation impossible of solution when we attempt to make any comparison as between the assessments of live stock, agricultural equipment and farm products on the one hand, and secured assets of a bank or building and loan association on the other. When we come to assessment of notes and accounts, we think it clear, from the testimony of the deputy assessor, that what is done is assess them at sixty-five to seventy per cent of their face value as reported to the assessor. Bonds are assessed at seventy per cent of their face value, unless their market value is less, and then at a figure slightly under their market value. In view of all this, can it be said that there has been such discrimination as justifies the complaint of the appellants.

That the assets of the appellants are made up of high-grade securities will not be denied. There is and can be no reasonable doubt as to their being worth one hundred per cent of their face value. No one can question values

based on securities of the Government of the United States. When we come to their chief business, that of lending money on real estate, we must consider that every loan is made upon fair appraisement of real estate; the loans are confined to a percentage of the appraised value of such real estate, in order to guard against fluctuation in value; the property on which the loans are made is insured against destruction by fire and otherwise, and, generally, every possible step taken to secure the solvency of every dollar of such assets. In addition their business is subject to the rigid and constant supervision of the State or Federal Government, or both, and their solvency at all times is a mandatory requirement for doing business. Such a class of assets is, of course, clearly distinguishable from the ordinary run of notes and accounts. Of course, notes held by individuals, firms and corporations are, sometimes, equally well secured; but when we treat them as a class such statement does not hold good.

While our State Constitution requires uniformity and equality in taxation, no one has ever believed that either could be attained as a practical matter. The constitutional provision is a statement of an ideal, and is implemented by numerous statutes, all seeking to put into practice such ideal so far as is humanly possible. But do all we can, and attempt as rigidly as we may to enforce such statutes, we will fall far short of attaining equality, uniformity and justice in levying taxes. In the first place, assessors often deliberately fail to perform their full duty; but their most sincere effort to perform such duty would not result in an assessment fair to everyone. For example, who can know the exact value of an oil or gas well; or, to confine ourselves to Class I property, the value of a herd of cattle, or a flock of sheep, or agricultural implements; or how much will be realized from the notes and accounts of any business or individual. No one can escape the variations of financial fortune, and as to every note and account there is some risk. Then, delays in and costs of collection must be considered. No one can fix with certainty the real value of the great mass of property of all types and classes, and a certain amount of estimate and conjecture is inevitable.

In these circumstances assessors are warranted in adopting some reasonable plan for the valuation of types of property, the value of which may be affected by the considerations above mentioned. As to notes and accounts, assessors do not have the facilities to investigate the financial standing of debtors, and if they had, perfection could not be attained. They are driven to adopt some standard, and if they do so, and it is a reasonable one, the results of its application cannot be considered as a discrimination against owners of other property, the value of which can be more definitely determined, and is largely fixed by its very nature. The results may not be entirely fair to other taxpayers. In many instances notes and accounts worth full value may be assessed at less than their value and, in individual cases, a clear case of discrimination may be shown to exist. But this does not rise to the importance of general discrimination as between property of different types, even that within the same legal classification. It must be agreed that every effort should be made to avoid such instances of discrimination, and the use of the plan adopted by the Assessor of Kanawha County, and other assessors throughout the State, should be limited to cases where no better plan can be devised. Every assessor should feel the obligation to prevent discrimination between taxpayers to the fullest extent possible.

On the record before us, we do not believe a clear case of discrimination has been shown. No one contends that the property of the appellants has been assessed in excess of its true and actual value. Appellants would not be permitted to do business if their respective assets were less in value than that reported to the assessor. State and Federal authorities would intervene, if such a situation existed. As has been stated above, the assets of each of the appellants were originally selected after the most rigid test as to its value, and care taken to guard against the fluctuation in values of properties securing such assets. Clearly, as relates to safety and security it is a different type of property from the ordinary note or account. Why, therefore, should we be asked to reduce an assessment below its true value, merely because as to other property,

the value of which is uncertain, and by reason of its character cannot be accurately determined, assessing officers have, in good faith, adopted a plan for arriving at an estimated value?

Then, what evidence is there in the record that Class I intangible property, not covered by the type of property owned by the appellants, is assessed at less than its true value. Of course, appellants cannot, on account of practical difficulties, show that it is assessed at less than its value, and, for the same reason, the assessor cannot show the opposite. Neither the assessor nor the appellants know, or can by any reasonable effort ascertain, the true and actual value of the intangible Class I property in Kanawha County, represented by the common run of notes and accounts. If this be true, how can it be claimed that any discrimination was practiced. We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value. The more or less arbitrary allowance of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. We think it was. Some plan which would take into account the difference between the secured notes and the unsecured notes and accounts could, and should be devised; but mere error of judgment as to the plan adopted is not sufficient to establish discrimination, where the plan, though imperfect, is adopted in a good faith effort to secure fair and equitable assessment, and equality and uniformity in taxation.

Recent radical changes in our tax system, brought about by the adoption of the tax limitation amendment, Section I of Article X of our Constitution, whereby property is classified, gives rise to the suggestion that once property has been classified, there can be no further distinction as to property within a given classification. Whether there can be such distinction is perhaps dependent on the character of the property involved. Each of the four classifications of property for tax purposes includes property of

different types, for the ascertainment of the value of which different methods are employed. In the very nature of things this must be true. The Constitution plainly says that the value of all property for tax purposes shall be ascertained "as directed by law". Who gives the direction? Obviously, the sole law-making authority, the legislature. In respect to building and loan and federal savings and loan associations, as well as other types of property, the legislature has given specific direction, and as to other types of property the directions are more general. We do not doubt the inherent and constitutional power of the legislature to give these directions, so long as they are designed to provide a method in keeping with the aim to tax property equally and uniformly, as required by our Constitution. So far as concerns our State Constitution, we think the question is set at rest by the decision of this court in *Charleston & Southside Bridge Co.* v. *Kanawha County Court, supra.* That case was decided in 1896, when there was no classification of property for tax purposes, and uniform tax rates, in each taxing district, applied to all property. However, Section I of Article X of the Constitution, as it then was, contained the same provisions with respect to equality and uniformity as those contained in the present Constitution. In that case the plaintiff was the owner of a toll bridge, and the legislature had provided a particular method for the assessment of toll bridges and ferries. Points 2, 3, and 4 of the syllabus read as follows:

> "2. The legislature has power to prescribe the method by which the valuation of any class of property may be ascertained, and, where the value of the same class of property is ascertained throughout the state in the same manner, such valuation cannot be regarded as unconstitutional for lack of uniformity or equality.
>
> "3. The Constitution prescribes what property is to be taxed, and the legislature prescribes the manner in which it shall be taxed, which mode of taxation shall be equal and uniform as to all classes of property.

"4. A tax upon all business of the same class, which is uniform as to that kind of business, is not unconstitutional."

We know of no subsequent case which in any way departs from that decision. It was cited with approval in *Christopher* v. *James*, *supra*. The later classification of property does not, in our opinion, call for any departure from the principles therein pronounced. We think they are applicable to our present tax system.

Appellants strongly rely upon the case of West Penn Power Co. v. Board of Review and Equalization, 112 W. Va. 442, 164 S. E. 862. That case was decided in June, 1932, and related to the assessment of real estate, a specific type of property. It was there held, relying largely on *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. ed. 340, that "Under the Fourteenth Amendment of the Constitution of the United States, it is the right of a taxpayer whose property is taxed at one hundred per centum of its true and actual value to have his assessment reduced to the percentage of the value at which other properties of the same class in the same governmental unit of taxation are taxed, even though the statute requires that all property be taxed at its true and actual value." Many other cases decided by the Supreme Court of the United States could be cited in support of this holding, among which are: *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499; *Louisville & Nashville Ry. Co.* v. *Greene*, 244 U. S. 522; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350; *Bohler* v. *Calloway*, 267 U. S. 479; *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23; *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239. But the force and weight of these decisions, as applied to the present controversy, is largely, if not entirely, nullified by the recent decision of the same Court in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, 84 L. ed. 1254. In that case it was held that, "The Equal Protection Clause of the Fourteenth Amendment permits a State to classify the property of railroads and other public utilities separately from other

property and to tax it higher", and also, "Where a State for many years systematically assessed the property of railroads and other utilities at full cash value and all other kinds of property at less than cash value, held that the practice was the 'law' of the State, within the meaning of the Equal Protection Clause of the Fourteenth Amendment, although uniformity of taxation was commanded by the state constitution, and although it were true that the tax in question was sustained by the State Supreme Court by a resort to fiction." We understand this case to hold that none of the cases decided by the Supreme Court of the United States, cited above, were meant to prevent a state from applying different yardsticks to different classes of property; and, applying this principle, we would say it would be no violation of the equality and uniformity clause of either the State or Federal Constitution to apply a different yardstick to different types of property in the necessary ascertainment of the value thereof for tax purposes. The cases last cited above are distinguished, and we think that, as the law now is, appellants can find no support for their contentions under the Fourteenth Amendment of the Federal Constitution. The *Browning* case involved the assessment of a railroad, but the principle announced applies to the assessments of all types and classes of property by a state or its political subdivisions. Under that decision, it is doubtful whether the ruling of this Court in the *West Penn* case could now be sustained by sole reliance on the Fourteenth Amendment.

We are not persuaded that the ruling in the *West Penn* case, basing the same on our State Constitution, requires us to hold with the contention of the appellants in the case at bar. As stated above, that case involved real estate. There was clear discrimination, because it was apparently admitted that, in assessing real estate in Brooke County, approximately twenty per cent was taken from the true and actual value thereof, and the assessment fixed at eighty per cent of such value; whereas, as to the property of the West Penn Power Company, that reduction was not made, and its real estate was assessed at its true and actual value. There could, of course, be no just excuse for that character

of discrimination, and the only question before the Court was whether the legislative direction, to assess property at its true and actual value, should or should not give way to the constitutional requirements of equality and uniformity. It was decided that, under the Fourteenth Amendment of the Federal Constitution, the constitutional requirements were paramount, resulting in a reduction of the West Penn Power Company's property to eighty per cent of its value. It would, perhaps, be out of place to discuss the wisdom of that decision, because we do not think it controlling in the case at bar. It may be that the principles of that case are sound, and that under our Constitution, without reliance on the Fourteenth Amendment, we should adhere thereto. But where do they lead us? An assessor violates the law, and a portion of the taxpayers receive an advantage from such violation. When this occurs, other taxpayers naturally feel that they should be accorded the same treatment. Must the courts insist on, require and direct other violations of law by tax officials? Suppose next year the assessor of any county, or of all the counties of the State, decides to assess real and personal property of individuals at fifty per cent of its true and actual value, would not the owners of public utilities, banks, building and loan associations and federal savings and loan associations be entitled to the same treatment? Is it not time to find some remedy for this situation, other than one involving an appeal to the courts to enforce a system of assessments for tax purposes which is plainly in violation of the law as written? It would be refreshing, indeed, if some taxpayer, or group of taxpayers, would sponsor an effort to see that our tax laws are obeyed, rather than to take advantage of their open violation. It is not for this Court to point out ways by which regard for law may be required of public officials, but they exist. It is probably too much to expect that they will ever be used.

The case before us does not involve the assessment of real estate, but a type of property of a peculiar nature and as to which the legislature has exercised its power to direct how it shall be assessed, and as to which different methods of ascertaining values must be employed, even as between types of the same constitutional classification. The assessor, we may assume, has in good faith, made an effort to

ascertain the value of intangible property in Kanawha County, other than that owned by appellants. It is entirely different from a case where the same type of property, requiring the same methods of ascertaining the value, is involved, and where one taxpayer's property of the same type is assessed at its true and actual value and another taxpayer's assessed at a lower figure. It is understandable how a court in such a case might feel disposed to favor a taxpayer, even at the risk of encouraging violations of plain statutory law by taxing authorities. Discrimination in the assessment of property of the same type, in the same taxing district cannot be defended, and we do not mean to defend such a practice in any sense. We think money and solvent securities should be assessed at their face value, and we think the arbitrary practice of allowing a certain reduction from the face value of notes and accounts should be discontinued so far as possible, although we realize that some plan of estimating value must be followed in a great many instances. Our holding goes no further than this: What has been shown with reference to the assessment of intangible property in Kanawha County, of types other than that owned by the appellants, is insufficient to establish a case of discrimination, which would justify us in applying the principles announced in *West Penn Power Co. v. Board of Review and Equalization, supra.*

In view of the fact that the Legislature has given specific direction as to the assessment of the property of the appellants, and the assessments were made in conformity with such direction; and further that there has been no clear showing of discrimination, to the prejudice of the appellants, in the assessment of intangible property in Kanawha County, the order of the circuit court of said county, complained of, is affirmed.

Affirmed.

Code of West Virginia, 11-3-1:

> "All property shall be assessed annually as of the first day of January at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which

is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. The taxes upon all property shall be paid by those who are the owners thereof on that day, whether it be assessed to them or others. If at any time after the beginning of the assessment year, it be ascertained by the tax commissioner that the assessor, or any of his deputies, is not complying with this provision or that he has failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at its true and actual value, the tax commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making such assessment and correction of values, the tax commissioner may appoint one or more special assessors, as necessity may require, to make such assessment in any such county, and any such special assessor or assessors, as the case may be, shall have all the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or them. The tax commissioner shall, with the approval of the board of public works, fix the compensation of all such special assessors as may be designated by him, which, together with their actual expenses, shall be paid out of the

county fund by the county court of the county in which any such assessment is ordered, upon the receipt of a certificate of the tax commissioner filed with the clerk of the court showing the amounts due and to whom payable, after such expenses have been audited by the county court.

"Any assessor who knowingly fails, neglects or refuses to assess all the property of his county, as herein provided, shall be guilty of malfeasance in office, and upon conviction thereof, he shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than three nor more than six months or both, in the discretion of the court, and upon conviction, he shall be removed from office."

Code of West Virginia, 11-3-14a (Ch. 118, Acts 1939, West Virginia Legislature):

"The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources.

"The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

"The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if the title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate

of such separate company shall be deducted in ascertaining the market value of the investment shares and investment accounts of such association. Every such association shall make a return to the assessor as of the first day of the assessment year."

Constitution of West Virginia, Article X, Section 1:

"Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value: except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other such property situated within municipalities, two dollars; and the legislature shall further provide by general law, for increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty per cent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty per cent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be ap-

portioned by the legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including live stock, employed exclusively in agriculture as above defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation, incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the State now existing."

14th Amendment to the Constitution of the United States, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

BRIEF FOR APPELLANT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

In the Matter of Tax Assessments Against

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, AND EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS

J. CAMPBELL PALMER, III,
Counsel for Appellants.

W. ELLIOT NEFFLEN,
KOONTZ & KOONTZ.

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS

HOW THE CASE AROSE

We have heretofore in our typewritten Statement as to Jurisdiction, at pages 7 to 12, inclusive, set forth how this controversy began, and the various legal steps by which it has progressed to this Court. However, because the appellee in its "Statement against Jurisdiction" p. 3, has alleged that appellants have proceeded "upon the erroneous theory that there has been a deliberate and systematic undervaluation of other species or classes of

property and an overvaluation of appellant's property" appellants feel they must again briefly review the proceedings.

At R. 50* the Assessor of Kanawha County, wherein appellants' businesses are located, testified that "in years previous to 1941" the method of assessment was to ascertain the value of the capital stock of appellants and other such companies and deduct 30% therefrom, the remainder being the figure used for assessment purposes. The Assessor further testified " . . . the 30% discount would be the more equitable assessment." (R. 51.)

Upon cross examination by the Attorney General, the Assessor of Kanawha County stated that he was familiar with the methods suggested by the Tax Commissioner for assessment of associations such as are appellants, and when directly asked if "that method does not produce an assessment of the true and actual value" (as required by the statute) stated, "I do not believe so" (R. 122), and gave his reasons.

When further asked by the Attorney General how he would assess the "*property*" of such associations, he answered: (R. 123) "Well, I would take the investment shares and investment account, figure their undivided profits and probably their reserve for contingency, and *allow 30% discount as an equalization factor* to other classes of property and other properties in the same class."

However, after the Legislature of West Virginia passed the statute whose validity is herein questioned, i.e. Code 11-3-14a† requiring that "The *capital* of every building

*All references to the Record or R. contained in this brief, refer to the printed record used before the Supreme Court of Appeals of West Virginia, which is a part of the transcript of record forwarded to the Clerk of this Court.

†Chapter ...., Article ..., Section ...

and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed it its true and actual value . . . ."‡ The appellee herein, Tax Commisisoner of West Virginia, ordered the Assessor of Kanawha County to make assessment at full and complete value of the capital stock of appellants, and to discontinue the allowance of discount of 30%, even though all other taxpayers still received at least a 30% discount in their assessments.

The assessments thus made were appealed to the County Court of Kanawha County, Ex-officio Board of Review and Equalization, a lay court, which reversed the assessments made by the Assessor at the order of the Tax Commissioner, after a full hearing was had, and testimony from all parties was heard. It was before this Court that the testimony contained in the printed record was taken. The reversal was specifically upon the ground that the appellants were taxed proportionately higher than other taxpayers, and therefore discriminated against, and reductions in the assessments were ordered, and the assessment was made as the Assessor stated above it should have been calculated.

An appeal to the Circuit Court of Kanawha County followed, which Court reversed the County Court, upon the ground that there was no legal discrimination if all building and loan associations were treated alike, even though there was an admitted discrimination against them as compared with all other taxpayers. An order was thereupon entered, reinstating the assessments made by order of the Tax Commissioner. After appeal to the Supreme Court of Appeals of West Virginia, this order was affirmed.

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‡All emphasis herein is supplied.

VALIDITY OF STATUTE WAS INVOLVED BELOW, AND APPELLANTS WERE DISCRIMINATED AGAINST, AND THEIR FEDERAL RIGHTS VIOLATED

It is true that in the opinion of the Supreme Court, Judge Fox, who wrote it, attempted to demonstrate there was no discrimination against appellants. But R. 23 discloses that this Honorable Judge would have refused to grant the appeal in the first place (appeals in West Virginia are not as of right, but rest in the discretion of the Supreme Court), and it is a further fact that Judge Fox was the Tax Commissioner of West Virginia, up to the time he took his seat as a Judge of the Supreme Court of Appeals of this State, and with all due deference to the Judge, and with the very highest respect and admiration of his undoubted ability, it is suggested that in the instant case the language of his opinion is much more that of a Tax Commissioner than of a Judge of a Court of last resort. It is because of his opinion and decision, and the appellant's disagreement therewith, that this present appeal is prosecuted.

It seems rather circuitous for the Attorney General of West Virginia to state that there is no jurisdiction for this appeal, because the decision from which appellants are appealing, reversing a decision in their favor, says they aren't harmed or discriminated against.

The statute in question, as interpreted by the Tax Commissioner, and as applied by him to these appellants, in which interpretation and application he was sustained by the Supreme Court of Appeals of West Virginia, is invalid, is our respectful contention. It is this interpretation of the statute, and its application to the appellants, and the sustaining thereof by the Court of last resort, which renders the statute invalid, and the reason for this appeal; and we submit this creates one of the requisite grounds for jurisdiction by appeal.

With all proper humility, may we be so bold as to suggest that Judge Fox and the Attorney General, who is counsel for the Tax Commissioner, are apparently either mistaken or are uninformed as to the provision of the statute whose validity is questioned. Throughout his opinion, Judge Fox speaks of a tax on the "intangible property" of these appellants. It is true that in *Charleston Federal Building & Loan Association* vs. *James*, 120 W. Va. 781; 200 S. E. 845, the Supreme Court of West Virginia, as related by Judge Fox on page 3 (typewritten) of his opinion, held that as to such building and loan associations, they were incorporated companies and "Therefore, their intangible and other personal property is subject to taxation."

But the instant statute, passed by the Legislature of West Virginia since the above decision is NOT a tax on such intangible or other property of any such association, but a tax on its *capital stock*, as represented by investment shares or accounts. The statute, after providing as above quoted, then goes on, "Provided, however, that such shares and such accounts held by the United States government or any of its agencies shall *not* be included in determining such assessment."

The statute then gets down to what we consider the meat or heart of it. "The real and actual value of such *capital*, represented by the *market value* of such investment shares and investment accounts as aforesaid should be ascertained according to the best information which the Assessor may be able to obtain . . .." whether from returns by the association, or from actual sales, from answers to questions by the Assessor, or from other sources.

Hence, the tax is one on the capital stock, less United States Government owned shares. It is not at all a tax on intangible or other personal property, and all the

language to this effect in Judge Fox's opinion is misguided, and in our opinion irrelevant and erroneous.

The Attorney General of West Virginia, is likewise in this same manner "off the beam." He talks of book value, face value, etc., of the *assets* of these appellants, and then how the true and actual value of such *assets* was arrived at. He overlooks the main point, that the problem was to determine the *value of its capital stock*, not the value of the underlying assets.

This became very apparent when the Attorney General, beginning on p. 4 (typewritten) of his "Statement Against Jurisdiction" attempts to show by figures there was no discrimination against appellants in the determination of their assessments.

Exhibit Wilkinson 1 (R. 185) was the revised computation of the assessment made by the Tax Commissioner's office, which the Assessor of Kanawha County was directed to use (R. 48) for the assessed value of the capital of appellant, Charleston Federal Savings & Loan Association. An examination of that exhibit shows the shares at par value owned by the Association, and those owned by the United State Government, and the value of both together; other capital was then added in, and owned and assessed real estate was then deducted. Then the net value per dollar of invested capital was calculated by dividing the total value of par value shares into the other sum, arrived at as above stated, resulting in a figure of $1.049. Then the value of the shares owned *only* by the Association (the statute provided government owned shares were to be excepted) was multiplied by this net value of invested capital, and the resulting amount, without any 30% deduction, was the figure arrived at for assessment purposes.

This is the formula devised by the Tax Commissioner for finding the assessed value of the capital as required

by statute. These appellants, in the Courts below, urged that certain of the items of "other capital" be excluded in ascertaining market value, and both below and here contend that the 30% deduction must be allowed or discrimination exists.

But the Attorney General, in his calculation, as did Judge Fox in his opinion, ignored the purpose and intent of the statute to *tax capital*, and speak of a tax of assets and personal property, and we submit this is entirely unconnected with any attempt to arrive at an assessed value of capital.

On Page 4 (typewritten) of the Attorney General's Statement, he uses the figures given in Exhibit Wilkinson 2 (R. 187), (the return prepared and filed by appellant Charleston Federal Savings & Loan Association, R. 49) and from it takes out the value of the real estate loans, and the amount of cash, and allows the 30% deduction appellants insist is correct, and still arrives at a higher value for assessment purposes than does the Tax Commissioner. Of course, this is true so long as the Attorney General ignores that part of the statute which requires that the shares owned by the Federal Government be exempted in calculation of the assessment. Of the total shares of that association, as shown by Exhibit Wilkinson 1, (R. 185), a simple calculation will show that the Government owned 36.1%. If the Attorney General would deduct that from his calculation, he would easily see how there was a discrimination even under his theory, as against the Charleston Federal Savings & Loan Association, because the actual assessment appealed from, as made by the Tax Commissioner, was $921,180.00, and after deducting the United States Government's proportionate share of the underlying assets (used by the Attorney General for an example to show no actual discrimination) the proper value for assessment under this formula, would be $606,812.16.

This is less than the figure of $639,030.00, which was the value fixed by the County Court for the Charleston Federal Savings & Loan Association, and which we herein contend is the correct figure.

So, using the Attorney General's own figures, *but allowing the deduction required by the statute*, there is shown to be an absolute case of discrimination.

Like deductions for Government owned shares, made in the other examples used by the Attorney General, would produce similar results, and need not be here repeated.

While the Attorney General (p. 8; typewritten) contends certain facts were found by the Supreme Court of West Virginia, which may be true, yet it is from these findings, based upon an erroneous understanding of the statute, and reversing findings of fact made by the County Court, whose duty *alone* it is to find facts, that appellants are appealing.

The Supreme Court of Appeals of West Virginia, in its opinion, urges as one of the main reasons for sustaining the Court below, that even if there were discrimination shown against these taxpayers, that their assessment was correctly calculated as required by the statute; and that because other taxpayers were given a lower tax or tax assessment, either by error or by intent, that the means of correction was to find a way to raise the tax assessments or taxes of the others; and it was improper to lower the assessment of the one thus discriminated against, in order to equalize all. In other words, then, the doing of another wrong, would not make a right. (See opinion of Judge Fox, typewritten, on third to last and second to last pages.)

But case after case holds this decision of the Supreme Court of West Virginia is erroneous, and in such a situation, it being impossible as a practical matter to raise

all other assessments, and since discrimination does exist, it can only be corrected by the Courts ordering the lowering of the assessment of the one who appealed therefrom and who is discriminated against, to the level of all other taxpayers.

Such was the direct holding of this Court in the case of *Sioux City Bridge Co.* vs. *Dakota County*, 260 U. S. 441, 67 L. Ed. 340; and *Greene* vs. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 61 L. Ed. 1280, both of which are quoted from directly upon this point at p. 23 (typewritten) of these appellants Statement on Jurisdiction.

THERE IS A SUBSTANTIAL FEDERAL QUESTION IN ISSUE, AND ALSO A PROCEDURAL RIGHT TO APPEAL

Counsel for the Appellants are advised by the Clerk of this Court, and the Clerk of the Supreme Court of Appeals of West Virginia, that to their best knowledge, this is the first case in which an appeal has ever been allowed by the President of the latter Court.

Naturally, counsel are gratified that theirs should be the first case so to be allowed, and thus a precedent of many years overruled, and a new and, we believe, sensible view of the law taken.

This matter of appeal was presented orally to the Honorable H. H. Rose, President of the Supreme Court of Appeals of West Virginia, by counsel, together with all the required and necessary papers, including the statement on jurisdiction on July 13, 1944. Thereafter, for a period of nine days, counsel met with the Judge practically daily, to present authorities and arguments first, why the case was a proper one under the rules and statutes in which to have an appeal allowed; and secondly, that the Judge had the power and right to grant the appeal.

The case was considered at great length by the Judge, who independently made an exhaustive research of the law and cases upon the problem presented, and when the appeal finally was granted, it was only after the Judge had thoroughly considered all phases of it.

A "Memorandum" of opinion was then written by the Judge, and filed with the Clerk of this Court, which we include herein, as an appendix, and which we submit is very pertinent and important.

That opinion shows that the Judge was thoroughly conversant with the statute under which the appeal must be taken, the rules of this Court concerning appeals, and the law and cases thereon, and had considered them all.

A reading of that opinion will disabuse this Court of any idea that the Federal question, as alleged in the motion to dismiss, was either frivolous or insubstantial; that the validity of a state statute was not involved or concerned, and not contended to be invalid.

We respectfully submit that the presiding Judge below, who sat upon the case, was thoroughly familiar with it and with the record, and had studied all of the laws and cases upon which depended his decision as to whether to grant the appeal, and his opinion shows that this is properly a case in which an appeal was properly granted. We earnestly insist that this Judge would not have allowed this appeal, and thus created new law in West Virginia, by so doing, had appellants not have presented a case which fully warranted the allowance of the appeal.

Apparently, the Attorney General of West Virginia seems to believe that certiorari lies but an appeal does not, but we respectfully submit that in this instant case there exists every single factor required for the allowance of an appeal, and that while possibly certiorari might *also* lie, that beyond possibility of reasonable doubt, an appeal does and did lie.

Appellants therefore pray that the "Motion to Dismiss" may be disregarded, and the case heard and determined upon the merits.

Respectfully submitted,

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants*.

By: J. CAMPBELL PALMER, III,
Attorney for Appellants.

W. ELLIOT NEFFLEN,
KOONTZ & KOONTZ.

APPENDIX

No. 9501

In the Matter of Tax Assessments Against

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,

v.

GEORGE P. ALDERSON, STATE TAX COMMISSIONER, ETC.

MEMORANDUM

I

ROSE, *President:*

On the 13th day of July, 1944, the above plaintiffs presented to me, as President of the Supreme Court of Appeals, their petition praying for an *appeal* (not a writ of certiorari) to the Supreme Court of the United States from the final judgment of this Court in this case.

On the 21st day of July, 1944, I awarded the appeal as prayed for, without supersedeas, to take effect upon the giving of bond in the penalty of one thousand dollars conditioned for the prompt prosecution of the appeal, and the payment of costs in case of dismissal.

II

The appeal was sought under Section 237(a) of the Federal Judicial Code (Section 344(a), Title 28 U. S. C. A.), which provides, *inter alia*, that:

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; *or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal.* The appeal shall have the same effect as if the judgment or decree has been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal."

It will be observed that this provision does not apply to certiorari, which is the ordinary method of obtaining review of a judgment in the Supreme Court of the United States. It will further be observed that the appeal lies only where the judgment or decree sought to be reviewed is *adverse* to some provision of the Constitution, a treaty, or a law of the United States.

This statute can be traced back to 1789 substantially in its present form in its main features, and consistently to this day the Supreme Court has held that, within the narrow zone in which this section gives the right of appeal (formerly writ of error) *lies, as a matter of right and is not awarded for error. Memphis Gas Co.* v. *Beeler*, 315 U. S. 649, 62 S. Ct. 857, 86 L. Ed. 1090; *Ireland* v.

Woods, Commissioner, 246 U. S. 323, 38 S. Ct. 319, 62 L. Ed. 745; *Philadelphia & Reading C. & I. Co.* v. *Gilbert*, 245 U. S. 162, 38 S. Ct. 58, 62 L. Ed. 211; *Brown* v. *McConnell*, 124 U. S. 489, 8 S. Ct. 559, 31 L. Ed. 495.

Point 1 of the syllabus in *Ireland* v. *Woods, Commissioner, supra*, reads:

> "*The writ of error is allowed as of right*, in the cases designated therefor by the statute, when the federal question presented is real and substantial, and an open one in this court; but certiorari is granted or refused by this court in the exercise of its discretion."

And in *Philadelphia & Reading C. & I. Co.* v. *Gilbert*, *supra*, Van Devanter, Justice, speaking of the above-quoted statute, says:

> "The difference between the two modes of securing a review, as contemplated by the statute, lies in the fact that a *writ of error is granted as of right*, while a writ of certiorari is granted or refused in the exercise of a sound discretion."

In *Memphis Gas Co.* v. *Beeler*, *supra*, Chief Justice Stone says:

> "The Judicial Code was intended to restrict our obligatory appellate jurisdiction to a narrow class of cases, and to foreclose an *appeal as of right* whenever the prescribed conditions have not been rigorously fulfilled."

III

Of course, this appeal must be based upon a defense presented in good faith and upon substantial grounds. It will not be awarded where no question is raised except one which has been clearly adjudicated by previous decisions

of the Supreme Court. *Missouri Pac. Ry. Co.* v. *McGrew Coal Co.*, 256 U. S. 134, 41 S. Ct. 404, 65 L. Ed. 864; *Miller & Lux* v. *Sacramento & San Joaquin Drainage District*, 256 U. S. 129, 41 S. Ct. 404, 65 L. Ed. 859; *Minneapolis St. Paul & S. S. M. Ry. Co.* v. *C. L. Merrick Co.*, 254 U. S. 376, 41 S. Ct. 142, 65 L. Ed. 312; *Zucht* v. *King*, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194; *Quinn* v. *United States*, 260 U. S. 438, 43 S. Ct. 185, 67 L. Ed. 339.

Nor will an appeal be granted where the federal question is merely frivolous, formal, moot, or otherwise unsubstantial. *Parker* v. *McLain*, 237 U. S. 469, 35 S. Ct. 632, 59 L. Ed. 1051; *Quong Ham Wah Co.* v. *Industrial Accident Commission*, 255 U. S. 445, 41 S. Ct. 373, 65 L. Ed. 723; *Missouri & Pac. Ry. Co.* v. *Clarendon Co.*, 257 U. S. 538, 42 S. Ct. 210, 66 L. Ed. 354; *Ennis Water Works* v. *City of Ennis*, 233 U. S. 652, 34 S. Ct. 767, 58 L. Ed. 1139; *Wilson* v. *North Carolina*, 169 U. S. 586, 18 S. Ct. 435, 42 L. Ed. 865.

IV

In the present case, from the beginning—before the Board of Equalization and Review, before the Circuit Court, and before this Court—the petitioners continuously, in strict form, and vigorously, have insisted that the assessments made against their property violate the Fourteenth Amendment of the Federal Constitution, which provides that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * * nor deny to any person within its jurisdiction equal protection of the laws."

The sections of our State statutes which are claimed to be repugnant to this provision of the Constitution are as follows:

(1) Code, 11-3-1, which provides that:

> "All property shall be assessed annually as of the first day of January at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale. * * *;

and (2) Code, 11-3-14a, which provides that:

> "The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: * * *."

It is said that these provisions discriminate between corporations of the character of the plaintiff, on the one hand, and other property owners, on the other, in violation of the above-quoted provision of the Fourteenth Amendment to the Federal Constitution, and are therefore invalid.

This Court held these statutes, as construed and applied by the Tax Commissioner and the Assessor of Kanawha County, to be valid. It would seem, therefore, that in this case there "is drawn in question the validity of a statute" of a state "on the ground of its being repugnant to the Constitution * * * of the United States and the decision" has been "in favor of its validity", and that, therefore, the appeal lies, *not by reason of any error* in the decision of this Court, but by reason of the mere fact that the validity of the statute was called into ques-

tion, and its validity sustained. Section 344(a), Title 28, U. S. C. A. Indeed, in a tax assessment case almost exactly parallel to this case, the judgment of a state court has been reversed. *International Harvester Co.* v. *Wisconsin Department of Taxation*, --- U. S. ---, 64 S. Ct. 1060, 88 L. Ed. 1023.

The petitioners, therefore, would seem to have put themselves strictly within the statute entitling them to an *appeal as of right.*

V

Section 871, Title 28, U. S. C. A., provides that:

> "Writ of error from the Supreme Court to a State court in cases authorized by law, shall be issued in the same manner, and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States."

(By act of January 31, 1928, as amended by the act of April 26, 1928, it is provided: "The writ of error in cases civil and criminal is abolished. All relief which prior to January 31, 1928, could be obtained by writ of error shall hereafter be obtainable by appeal." Section 861[a], Title 28, U. S. C. A.)

By Rule 36 of the Supreme Court of the United States, it is provided, *inter alia*, that:

> "* * * In cases where an appeal may be had from a state court of last resort to this court the same may be allowed in term time or in vacation by the chief justice or presiding judge of the state court or by a justice of this court."

(Counsel for petitioners states that he is informed by the Clerk of the Supreme Court of the United States that

cases have come to that Court under writs of error or appeal awarded by the chief justice or presiding judge of the courts of last resort from all states except three or four, of which West Virginia is one, and that only the court of New Jersey consistently refuses to award such writs.)

The following cases in the Supreme Court of the United States have been found, in which the appeal was awarded by the chief justice or presiding judge of the Court of last resort of a state: (Kansas) *Fiske* v. *Kansas*, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108; (Oklahoma) *Longest* v. *Langford*, 274 U. S. 499, 47 S. Ct. 668, 71 L. Ed. 1170; (Nebraska) *Missouri Valley Land Co.* v. *Wiese*, 208 U. S. 234, 28 S. Ct. 294, 52 L. Ed. 466; (New York) *Harnor* v. *People of New York*, 170 U. S. 408, 18 S. Ct. 631, 42 L. Ed. 1087; (Colorado) *Butler* v. *Gage*, 138 U. S. 52, 11 S. Ct. 235, 34 L. Ed. 869.

In the following state cases the granting of such appeal by a state judge is discussed in connection with certain subsidiary questions which arose after an appeal or writ of error to the Supreme Court of the United States had been granted by the chief justice or presiding judge of a state court of last resort: (North Carolina) *Seaboard Air-Line Ry. Co.* v. *Horton*, 176 N. C. 115, 96 S. E. 954; (California) *Greely* v. *Townsend et al.*, 25 Cal. 604; (California) *Terry* v. *Southern Pacific Co.*, 176 Cal. 584, 169 P. 354; (Kentucky) *Ohio River Contract Co.* v. *Gordon*, 172 Ky. 404, 189 S. W. 451.

Section 5399 Vol. 10 Cyclopedia of Federal Procedure, 2nd Ed., reads:

> "The principle that the petition for appeal should be presented to and allowed by the proper judge of the court below rather than to a Justice of the Supreme Court applies to appeals from state courts."

And in Section 5508 of Vol. 11 of the same work is found the copy of an order allowing such appeal by the presiding judge or chief justice of the court of last resort of a state.

In no case found has the right or power of the presiding judge or chief justice of a state court of last resort to issue such appeal been disputed, or even discussed. That right and that power seem to be universally conceded.

VII

Believing that the petitioners are entitled to the appeal *as of right*, not for error, but by reason of the questions raised, and further that the president of this Court has the power to grant the appeal, I conclude that the writ cannot properly be denied. A judge, empowered to award an appeal, may not lawfully, refuse the application of a litigant who is entitled thereto as of right.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,
Appellants,

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia.

BRIEF ON BEHALF OF APPELLANTS

KOONTZ & KOONTZ, J. CAMPBELL PALMER, III,
Counsel for Appellants.

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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IN THE

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CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia.

BRIEF ON BEHALF OF APPELLANTS

OPINIONS BELOW

The opinion of the Circuit Court of Appeals of West Virginia is reported in 126 West Virginia ___, 30 S. E. (2d) 513, and is contained in the printed Statement as to Jurisdiction, pages 35-50.[1] The opinion of the Circuit Court of Kanawha County is found at S. J. 32-35. The opinion of the County Court of Kanawha County, West Virginia, ex officio Board of Review and Equalization, is found at S. J. 26-29.

[1](This Statement as to Jurisdiction was not reprinted, but is in the same printed form as it was for jurisdictional purposes, and is hereinafter referred to as S. J. .....)

JURISDICTION

The jurisdiction of this Court rests upon Section 237(a) of the Judicial Code, 28 U. S. C. A., Section 344(a).

STATUTES INVOLVED[2]

Chapter 11, Article 3, Section 14(a), Michie's Code of West Virginia, 1941, as amended by Chapter 118, Acts of the Legislature of West Virginia of 1939.

Chapter 11, Article 3, Section 1, Michie's Code of West Virginia, 1941.

CONSTITUTIONAL PROVISIONS INVOLVED

Article X, Section 1, of the Constitution of the State of West Virginia.

Section 1 of the Fourteenth Amendment to the Constitution of the United States.

ADMINISTRATIVE ORDER INVOLVED

There is involved an administrative order of the appellee, George P. Alderson, State Tax Commissioner, of West Virginia, issued to the Assessor of Kanawha County, West Virginia, and others, and it is found in the record printed for use in the Supreme Court of Appeals of West Virginia, pages 276-277.[3]

STATEMENT OF THE CASE

In 1932, the people of the State of West Virginia voted to, and did, ratify an amendment to the Constitution of West Virginia, which is now Section 1 of Article X, under the heading "Taxation and Finance," and which is

[2](The statutes, constitutional provisions and administrative order involved herein are set out in full in the Appendix hereto, Part I.)

[3](The record printed for use in the Supreme Court of Appeals of West Virginia is being used in this Court to save reprinting, and is hereinafter referred to as R. .....)

popularly known as the "Tax Limitation Amendment." (See Appendix for full section.)

In substance, that section provides that but for the exceptions therein contained "taxation shall be *equal and uniform* throughout the state" and "no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value."

Then the section provides for dividing all property in West Virginia into four classifications, and the amendment further places an absolute maximum amount of taxation for each of the four classifications, and the various classes of property contained in each such classification.

The instant case is primarily concerned with property embraced within the provisions of Class I, which comprises "personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property," the maximum tax limitation being fifty cents on each one hundred dollars of value thereof. The second classification is residential property owned, used and occupied by the owner thereof exclusively for residential purposes, and farms occupied and cultivated by their owners, or bona fide tenants, and has a maximum tax limitation of one dollar per one hundred dollars. The third classification is all other property situated outside of municipalities with the limitation of one dollar and fifty cents per one hundred dollar value; and the fourth class is all such other property situated within municipalities, the limitation being two dollars.

Prior to 1939, no tax on building and loan associations, as such, was assessed or levied in West Virginia, but the stockholders of such associations were individually as-

sessed and taxed for such stock ownership. (See *Ohio Valley Building & Loan Ass'n* v. *County Court of Cabell County*, 42 W. Va. 818, 26 S. E. 203.) There was no requirement by the statutes of West Virginia for such associations to furnish or supply the county assessors with the list or the names of such shareholders, and consequently, it being left to such shareholders to report their own ownership of said stock, it was not always reported.

However, in Kanawha County, at least, when so reported by the owners, the assessor allowed a deduction of at least 30% from the actual value for assessment purposes, in line with assessments of other personal property. (R. 50.)

Then the Supreme Court of Appeals, in 1938, in the case of *Charleston Federal Savings & Loan Association, et al.*, vs. *James, Tax Commissioner*, 120 W. Va. 781, 200 S. E. 845, reversed its older and former ruling, and held all building and loan associations were taxable under the same provisions as other corporations.

In 1939, the Legislature decided to remedy this, and added Section 14(a) to Section 14 of Article 3 of Chapter 11, which amendment is the principal statute here involved.

In substance, this new Section 14(a) provided for the *capital stock* of building and loan associations to be assessed "at its true and actual value," and since the capital stock of a building and loan association is actually the money the so-called stockholders or shareholders have deposited, this amounted to a tax on the true owners, which for convenience sake was collected from the building and loan association as a whole, instead of each one individually, as formerly.

On its face, the statute is perfectly fair and constitutional. However, its interpretation by the Tax Com-

missioner of West Virginia, the appellee herein, and that interpretation being forced upon the Assessor of Kanawha County, and such interpretation and enforcement having been upheld by the highest court in West Virginia, the Supreme Court of Appeals, it has become unstitutional, and an invasion of the rights of these appellants, which rights are protected not only by the Constitution of the United States, but by the Constitution of West Virginia.

Section 1 of that same Article 3 of Chapter 11 for many years had provided that "all property shall be assessed annually as of the first day of January at its true and actual value," so Section 14(a) was in conformity with it, but included the capital stock of building and loan associations within the meaning of "all property." But fixing the value for assessment purposes as "the true and actual value," was, because of Section 1, not new in West Virginia law.

Prior to 1941, the Assessor of Kanawha County, West Virginia, after ascertaining the true and actual value of all property within the provisions of Class I of the Tax Limitation Amendment (Const. of W. Va., Art. X, Sec. 1), allowed a minimum deduction of 30% or more therefrom, before fixing the values for assessment and taxation purposes. Such a 30% discount or deduction was allowed as a minimum to every taxpayer who had property in Class I, had been so allowed for many years, and after the passage of Section 14(a), was allowed all building and loan associations. (See testimony hereafter related.) The record discloses particularly, that in 1940 each of appellants was allowed such a discount by the Assessor. (R. 81, 94, 100, 110-111.)

For the year 1941, each of the four appellants again filed their tax returns with the Assessor and took the 30% deduction from the actual value, to arrive at the assess-

ment figure. (R. 49; see Wilkinson Ex. 2, R. 187, at 190, for Charleston Federal Savings & Loan Association; for First Federal Savings & Loan Association, R. 52, 94, and Wilkinson Ex. 4, R. 199, and at 205; for West Virginia Building & Loan Association, R. 110, and Watt Ex. No. 1, R. 241, at 247; for Empire Federal Savings & Loan Association, R. 117, 182-183.) The Assessor of Kanawha County accepted their returns with the 30% deduction, and again intended to allow it, to equalize these taxpayers with all others who owned property in the same classification, who were and are given this minimum deduction of 30%. (R. 50-51, 56, 73, 123.)

But the Tax Commissioner of the State of West Virginia, appellee herein, on June 4, 1941, wrote a letter to all of the tax assessors of the State of West Virginia, including the Assessor of Kanawha County (R. 159), which was introduced as Krueger Exhibit No. 1 (R. 276-278), in which he instructed the assessors, in effect, to discontinue this practice of allowing a 30% minimum discount or deduction, in calculating and determining the assessment of building and loan associations. Therefore, an assistant to the Tax Commissioner, for each of the four appellants, and over their objection, made out a revised return, and insisted that the Assessor of Kanawha County use the figures there arrived at as the valuations for assessment, which figures were made without any deduction of the 30% allowed to all other taxpayers whose property was in Class I. (These returns are Exhibit Wilkinson No. 1 [R. 185] for Charleston Federal Savings & Loan Association; Exhibit Wilkinson No. 3 [R. 194] for First Federal Savings & Loan Association; Wilkinson Exhibit No. 5 [R. 218] for West Virginia Building & Loan Association.)

The Assessor of Kanawha County, following the instructions of George P. Alderson, State Tax Commissioner, appellee herein, made a revised computation of

the capital stock of each of the appellants, and refused to allow them the 30% discount he had intended to allow, and had formerly allowed them, and all other similar taxpayers, and thereupon valued their property for assessment purposes as follows:

Charleston Federal Savings & Loan Association	$921,180.00
First Federal Savings & Loan Association	249,080.00
West Virginia Building & Loan Association	69,490.00
Empire Federal Savings & Loan Association	273,880.00

In accordance with pertinent statutes of the State of West Virginia, each of the appellants herein filed a petition and protest with the County Court of Kanawha County, ex officio Board of Review and Equalization of said County, a lay court, and hearings were had and testimony taken on said petitions and protests. That testimony is all incorporated in the record printed for use in the Supreme Court of Appeals of West Virginia, pages 47-184, inclusive, and the exhibits there introduced in evidence are in that printed record at pages 185-305, inclusive. At the end of that hearing, an opinion was rendered by the said County Court (R. 41-43, S. J. 26-29) and it was ordered that the assessed valuations of the properties of these four appellants be reduced to, fixed at, and placed on the property books of Kanawha County as of January 1, 1941, in the following amounts, respectively:

Charleston Federal Savings & Loan Association	$639,030.00
First Federal Savings & Loan Association	170,450.00
West Virginia Building & Loan Association	48,230.00
Empire Federal Savings & Loan Association	189,600.00

The testimony of the tax assessor of Kanawha County, and others, taken at the hearing before the County Court, will be later set forth, but the substance of the County Court's decision, with emphasis supplied, was that the valuations placed by the assessor, at the direction of the appellee herein, "are *in excess of the true and actual values of the respective properties* of the said four protestants, respectively, and that the assessed valuations aforesaid of the said properties of the said protestants are *at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are therefore discriminatory and not uniform and equal,*". (S. J. 27.)

On the 18th day of August, 1941, George P. Alderson, State Tax Commissioner, appeaied to the Circuit Court of Kanawha County, West Virginia, from the said order of the County Court, alleging (R. 27) that the assessor had correctly assessed the properties of these four appellants "for the purpose of taxation at their true and actual values in compliance with Section 14A, article 3, chapter 11, of the West Virginia Code * * * and further *in compliance with a written instruction* issued by the Tax Commissioner to all county assessors under date of June 24, 1941, relative to the assessment of the properties of all financial institutions operating in the State of West Virginia * * *."

On the 23rd day of December, 1941, the Circuit Court of Kanawha County rendered its opinion reversing the County Court of Kanawha County and reinstating the assessed values, as the Circuit Court said, "these being the amounts fixed and determined by the said Tax Commissioner and at his direction placed by the Assessor of Kanawha County, West Virginia, upon the property books for assessment purposes * * *." (S. J. 32.)

That Court further held, in part:

> "The burden of appellee's argument seems to be discrimination because of the fact that the Assessor of Kanawha County assesses other species of property in Class I upon a different basis. As I view it, such argument would be tenable only in the event there was a different assessment of other properties of a like character, in this instance building and loan associations. *The fact that live stock, personal property of other genus and real estate may be assessed upon a certain percentage of its estimated true and actual value, is not in my opinion discriminatory so long as all building and loan associations or institutions of like character are assessed upon a uniform basis.* (Emphasis supplied.)
>
> "The Courts have taken judicial notice of the long continued practice of assessors throughout the state to assess property, real and personal, at less than its true and actual value, varying in the different counties. If it be the policy of the state throughout its authorized officials to abandon this method of assessment and give literal application to the meaning of the terms 'true and actual value,' who is to gainsay them?" (S. J. 33.)

A statutory appeal under Chapter 11, Article 3, Section 25, Michie's Code of West Virginia, 1941, as amended by Chapter 41, Acts of the Legislature of West Virginia, 1943, from this final decree and order of the Circuit Court of Kanawha County, West Virginia, reversing the action of the County Court of Kanawha County, was taken to the Supreme Court of Appeals of West Virginia.

The Supreme Court of Appeals of West Virginia sustained the Circuit Court of Kanawha County upon the ground that the Legislature could subdivide any of the four classes set up in the Tax Limitation Amendment to

the Constitution and prescribe methods for valuing any class of property therein, so long as that valuation was made uniform throughout the State, and that there was nothing discriminatory or unconstitutional in so doing.

That Supreme Court of Appeals of West Virginia stated that these appellants relied upon the case of *West Penn Power Co.* v. *Board of Review and Equalization*, 112 W. Va. 442, 164 S. E. 682, decided in June, 1932, in which it was held that in a West Virginia county, where the property of one taxpayer was taxed at full value with a discount given to all other property owners in the county, that this was discriminatory and unconstitutional, and the assessed valuation of the property of the one taxpayer must be reduced by the same percentage allowed all other taxpayers in that county.

The Supreme Court of Appeals, in the instant case, stated that the West Penn decision was based largely on *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. Ed. 340, which had been sustained by the Supreme Court of the United States by many other cases, among which were: *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499; *Louisville & Nashville Ry. Co.* v. *Greene*, 244 U. S. 522; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350; *Bohler* v. *Callaway*, 267 U. S. 479; *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23; *Iowa-Des Moines National Bank* v. *Bennett*, 248 U. S. 239.

The Supreme Court of West Virginia went on to hold, in the instant case, that "the force and weight of these decisions, as applied to the present controversy, is largely, if not entirely, nullified by the recent decision of the same Court (Supreme Court of the United States) in *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254." Then the Supreme Court, in substance and effect, stated that if these taxpayers, the

appellants, were assessed and taxed at a higher proportional valuation than other taxpayers of the same class, the other taxpayers should be raised to the level of appellants, and appellants should not have their assessed valuations lowered to the level of other similar taxpayers.

Appellants, believing their federal rights infringed, and believing that the decision of the Supreme Court of Appeals of West Virginia sustaining the interpretation of Section 14(a) as made and enforced by the Tax Commissioner, makes Section 14(a) unconstitutional, after applying for and being denied a rehearing, applied to the Presiding Judge of the Supreme Court of Appeals of West Virginia for an appeal to this Court. After a careful consideration of the jurisdictional issues involved in the granting of the appeal, an order was entered by Presiding Judge Rose, allowing the appeal, and a "Memorandum" opinion was written and filed, sustaining the allowance of the appeal, and setting forth the reasons why it was believed by that Judge that the appeal was properly allowed. This opinion is printed as the Appendix to "Brief of Appellants in Opposition to Motion to Dismiss," at pages 13-20.

This Court on October 16, 1944, noted that "jurisdiction is reserved" as to this case.

QUESTION PRESENTED

Is not the statute of West Virginia unconstitutional in that its interpretation and enforcement by the Tax Commissioner, appellee, which interpretation and enforcement was sustained by the Supreme Court of Appeals of West Virginia, have violated the rights of appellants guaranteed by the United States Constitution, and by the Constitution of West Virginia, in that the property of all other similar taxpayers is admittedly assessed at a minimum discount of 30% of its true and actual value, which reduction or discount has been refused these appellants?

SUMMARY OF ARGUMENT

1. Appellants, taxpayers, were indisputedly and admittedly, purposefully and intentionally discriminated against in the assessment of their properties for tax purposes, in that all other similar taxpayers were and are given a minimum 30% deduction from the value of their properties when assessments are fixed, and that or any deduction, by order of the appellee, was refused to appellants.

2. When a state statute is interpreted and enforced by a state official so that it becomes discriminatory, and violative of the constitutional rights, both state and federal, of a citizen and taxpayer, and that interpretation and enforcement of that statute is sustained by the highest court of last resort of that state, then such statute is unconstitutional, and the federal constitutional rights of the taxpayer are infringed, entitling him to relief from this Court.

3. When a state tax statute, and its interpretation and enforcement by a state official is such as to require the property of a taxpayer to be assessed at its full value, when the property of all other similar taxpayers is assessed at less than full value, or reductions or discounts to such other taxpayers are made from full value before assessments are finally fixed; and when such discrimination violates the constitutional rights of the taxpayer, both state and federal, requiring uniformity and equality of taxation and treatment, this Court will correct such discrimination by ordering the assessments of the taxpayer who is discriminated against reduced to the level of all others, in conformity with the constitutional provisions, rather than ordering the assessment of all other taxpayers raised to the level of the one discriminated against, in accordance with the requirements of the statute.

ARGUMENT

Appellants' contentions, and their aggrievements, can be reduced to very simple propositions, in which contentions both the evidence adduced below and the law of the land support them. Therefore, the Supreme Court of West Virginia, below, was in error.

First, these appellants maintain that the evidence is undisputed that they were purposefully and intentionally discriminated against in the fixing of the values of their property for assessment, and therefore taxation, purposes.

There can be no doubt but that the Assessor of Kanawha County, West Virginia, allowed a minimum discount of 30% from the actual and real value of the personal property of all other taxpayers whose property is included within Class I of the Tax Limitation Amendment. (Incidentally, such a discount is likewise allowed the taxpayers whose property is embraced within the provisions of Classes II, III and IV, although that is not particularly pertinent to the instant case.

The reason we state so emphatically that such minimum deduction of 30% is and was allowed is *because the Assessor, under oath, so testified.* We set out immediately below the testimony of the Assessor and others, at some length, because we believe it is decisive of the case, and fully sustains appellants' contentions.

The testimony of the Assessor was taken by the appellants herein before the said County Court, and it was upon this testimony mainly, we presume, that the County Court based its findings of fact and its opinion. That

deputy assessor, Mr. Wilkinson, was in direct charge of all matters of assessment in Kanawha County, and testified that the returns as filed by the appellants herein, taking the 30% deductions, followed the same method that had been used by the building and loan associations in years previous to 1941 (R. 50).

When asked as to whether the method used by building and loan associations or the method used by the State Tax Commissioner's office was the proper method to be used in assessing the valuation of building and loan associations, the assessor testified in favor of the method used by the building and loan associations (R. 51).

> "A. I believe the return with the addition of the reserves less the 30% discount would be the more equitable assessment.
>
> "Q. Would that be in line with the assessments of other personal property in Kanawha County by allowing the 30% discount?
>
> "A. It would be, yes, sir."

Mr. Wilkinson further testified that the only reason he assessed the property of these associations at the present figure was because he received specific directions so to do from the State Tax Commissioner's office, and that he did not accept the valuations fixed by the Tax Commissioner's office because "I did not agree at first."

> "Q. Why did you later?
>
> "A. Because of the order by the Tax Commissioner's office, and I thought we had better probably do as he instructed." (R. 55.)

He further testified that the deduction of 30% with respect to the Charleston Federal Savings & Loan Association and its return, marked "Exhibit No. 2," was in accordance with the method used in Kanawha County in assessing intangible personal property. (R. 56.)

In stating how the various types of property in Class I were assessed, the witness stated the following method or plan was used:

> "Money is valued, of course, at 100%; accounts receivable are valued at about 70% unless they are installment accounts, and they are valued at approximately 65%.",

this being 65% of the book value shown on the face of them (R. 57).

He testified that live stock was valued at approximately 50% of the purchase price, which was ascertained by asking the farmer what he had paid for a plow or cattle or live stock, taking 50% of that value for assessment purposes (R. 57).

He further stated: "Notes are assessed at approximately 70%" (R. 57). Further that "Bonds are assessed at approximately 70% unless their market value is less. Then, of course, if the market value of bonds is less than 70% we generally factor them slightly under their market value."

Mr. Wilkinson testified that this 70% was of the face value of the bonds (R. 57-58), and later clarified this by stating he meant taxable bonds of private corporations, and that he assessed them at 70% of their market value (R. 144).

He testified that the above is the same system used throughout Kanawha County in all its magisterial districts, by all of the field deputies of the assessor, and under the instructions of the assessor of that county (R. 58).

With reference to Class II property, it is assessed, according to the witness, at approximately 50% to 60% of the construction cost of the building. The land values are determined by localities (R. 58-59). In some districts the *percentage* is very low, and in others fairly high (R. 59). The 50% to 60% percentage is of the cost or replacement value. That is the method that is used in arriving at the value (R. 59). Property used exclusively for residential purposes, in Kanawha County, is assessed at a percentage of its cost price, varying from 80% in some districts to 25% in other districts (R. 60).

In Classes III and IV, real estate assessed values are determined as above stated for Class II. Automobiles are assessed at approximately 30% less than the Blue Book value. Gas wells are allowed a one-third deduction; and merchandise, store goods and all equipment of business establishments are assessed at 60% of the book value or inventory (R. 62).

Household furniture is valued at a very low rate (R. 63).

Upon cross examination by the Attorney General, the Assessor of Kanawha County stated that he was familiar with the methods suggested by the Tax Commissioner for assessment of associations such as are appellants, and when directly asked if "that method does not produce an assessment of the true and actual value" (as required by the statute) stated, "I do not believe so" (R. 122), and gave his reasons.

When further asked by the Attorney General how he would assess the "*property*" of such associations, he answered: (R. 123) "Well, I would take the investment shares and investment account, figure their undivided profits and probably their reserve for contingency, and *allow 30% discount as an equalization factor to other classes of property and other properties in the same classification.*"

The Assessor further testified with regard to all assessors in West Virginia (R. 70-71):

> "Q. In those conferences have you discussed ways and means of arriving at the assessed valuation by fixing some percentage of the true and actual value of what the value might be if sold upon the market voluntarily?
>
> "A. Yes, sir.
>
> "Q. Will you state for the record the nature of these discussions as between the assessors upon that practice of using a percentage of market valuation upon a voluntary sale?
>
> "A. In assessing various classes of properties we have agreed several years ago to use certain percentages of the inventory values or cost values or the book values of certain properties. For instance, inventories, merchandise, stocks, fixtures, machinery and equipment, we agreed to assess at 60%, and various classes of notes from 65 to 80% of their value. In fact the instructions we had on the front of Form 3-C were used by the majority of the assessors until those instructions were taken off during the past year by the Tax Commissioner's office."
>
> * * * *
>
> "A. From discussions with other assessors I am of the opinion that the majority of the assess-

ments on all classes of property is less than the true and actual value." (R. 72.)

• • • •

"Q. If you had followed the method which you use in Kanawha County in arriving at the assessed valuation of the three protestants here, the Charleston Federal Savings & Loan Association, the First Federal Savings & Loan Association and the West Virginia Building & Loan Association, which you have related you used with respect to other personal property in Class I, and also taking the percentage valuation of other classes, if you had not received specific instructions from the State Tax Commissioner's office, and thereby arrived at a different figure of valuation for these three companies?

"A. I would have, yes, sir.

"Q. Would that valuation have been less than the valuation as fixed by the office of the State Tax Commissioner?

"A. It would have been, yes, sir.

"Q. Will you state what the percentage of that valuation would have been?

"A. It would have been approximately 30% less." (R. 73.)

For real estate, Mr. Wilkinson testified that they tried to value real estate at between 50% and 60% of its market value, and based this upon actual sale prices as ascertained from the revenue stamps attached to the deeds filed. (R. 115-116.)

He was further asked, on cross examination, if Section 14(a) provided anything about taking such a 30% discount, and stated that while the statute did not so provide, "However, the Constitution, under the new tax

limitation amendment, provides that no one class of property shall be assessed greater than any other class." (R. 123-124.)

He further stated, with reference to the 30% figure, "That is merely the figure of percentage we have used in trying to ascertain the actual value." (R. 124.)

On further cross examination, Mr. Wilkinson testified that in assessing different classes of property for various percentages of true and actual value, that they first attempted "to establish the cost price and then to establish our assessment value accordingly."

On further cross examination, he testified (R. 147) that the Tax Commissioner's office, both verbally and by written instructions, with reference to gas wells and oil wells, instructed the assessors to assess such properties at a percentage of their true and actual values.

With reference to the building and loan associations who have not filed returns but for whom the State Tax Commissioner had prepared returns, Mr. Wilkinson testified that he "had intended to use the sheets provided by the Tax Commissioner's office *with our usual 30% discount*" to figure their assessments. (R. 149.)

The employees of the Tax Commissioner's office themselves testified that in arriving at their valuations for assessment purposes, for small loan companies, that "no discounts were allowed from true and actual value," but when asked what discounts were allowed, stated: "The true and actual value as shown on those sheets was obtained by valuing the notes at 85 cents on the dollar or, as you term it, *discounting* the face value 15%." (R. 170.)

Since, admittedly, appellants did not receive this minimum 30% discount allowed all other similar taxpayers, we next must look to see if such discrimination was intentional and purposeful, and therefore unlawful.

Again, we contend this is conclusively proven. After the statute in question, Section 14(a), was enacted, at least in 1940, as shown by the record, the appellant taxpayers made their returns, and they were accepted by the Assessor, with the same minimum 30% discount taken and allowed, as was given all other similar taxpayers. (R. 50.)

And in 1941, these appellants again filed their returns claiming their 30% reduction. (See Exhibits.) And the Assessor of Kanawha County not only intended to allow it, but again under oath, testified they were entitled to it, and it was necessary to give it to them to equalize them with other similar taxpayers. (See testimony above.)

The only reason he did not allow it in fixing the final amounts for assessment purposes was because of a letter from the Tax Commissioner of West Virginia, appellee herein, ordering him not to do so (R. 55), and this was followed up by a filing of returns with the Assessor by the assistants to the Tax Commissioner, for these appellants, in which such deduction was not given. And only because of such orders, and for no other reason, did the Assessor fail to allow the appellants their minimum 30% deduction, and instead fixed the valuations for assessment in accordance with the returns of and computations by the Tax Commissioner. (R. 51.)

The Tax Commissioner, appellee herein, in his petition for appeal to the Circuit Court from the order of the County Court, stated that the properties of appellants were assessed "at their true and actual values in compliance with Section 14A, Article 3, Chapter 11, of the West Virginia Code, and also in compliance with other applicable provisions of Chapter 11 of the West Virginia Code, further *in compliance with a written instruction issued by the Tax Commissioner* to all county assessors under date of June 24, 1941. * * *" (R. 27.) And the

Circuit Court found and held that the assessments as made were determined by the appellee herein, "and at his direction" placed upon the property books. (S. J. 33.)

So, we submit, not only does the evidence conclusively prove the discrimination was purposeful and intentional, but in his pleadings in this case, the appellee has *admitted* that it was, and that he was the one who did it, or caused it to be done.

The County Court of Kanawha County, West Virginia, a lay court, who heard appellants' appeal from the assessments so fixed by order of the Tax Commissioner, and before whom the witnesses were produced, the evidence taken, and the testimony heard, granted appellants' petition, reversed the assessments made by the Tax Commissioner, and allowed the reductions requested, on the ground that the properties of appellants "are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and therefore discriminatory and not uniform and equal. * * *". (S. J. 22.) This quotation is from the order entered by that lay court at the end of the hearing before them.

Thus, the County Court, the fact finding body, has actually found that the facts showed such purposeful discrimination. Therefore, we submit, there can be no question but that there is and was a discrimination against these appellant taxpayers, and that it was purposeful and intentional.

Next comes our second proposition: When a statute of a state which is fair and constitutional on its face, is so interpreted by a state official as to make it discriminatory and violative of the constitutional rights, both state and federal, of a taxpayer, and such interpretation and the enforcement thereof is sustained by the highest court of

last resort in the State, thereby making it the law of the State, then such statute becomes unconstitutional, is violative of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and this Court will grant the necessary relief.

As this Court stated early in 1944, in the case of *Snowden* v. *Hughes*, --- U. S. ---, 88 L. Ed. Adv. Ops. 347:

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, *cf. McFarland* v. *American Sugar Co.*, 241 U. S. 79, 86-7, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself, *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-4."

And Mr. Justice Frankfurter, in his concurring opinion in that case, further stated:

> "I am clear, therefore, that the action of the Canvassing Board taken, as the plaintiff himself acknowledges, in defiance of the duty of that Board under Illinois law, cannot be deemed the action of the State, *certainly not until the highest court of the State confirms such action and thereby makes it the law of the State.*" (Emphasis supplied.)

Lastly, when a statute as interpreted and enforced by the highest court of a state, is intentionally discriminatory against a taxpayer, and thus directly conflicts with a state constitutional provision providing that taxation shall be "equal and uniform," and conflicts with the provisions of Section 1 of the Fourteenth Amendment pro-

viding for "equal protection of the laws," and forbidding the abridgement of "the privileges and immunities of citizens of the United States," then that statute, as interpreted and enforced, must yield to the constitutional provisions. And this Court has consistently held that in such event, when faced by such a dilemma, it being impractical to raise the assessments of all other taxpayers to comply with the statute, the taxpayer who is discriminated against must have his assessment reduced to the level of the other taxpayers, to comply with the constitutional provisions of uniformity.

We respectfully submit that the law, as decided by this Court in many cases, is plain. This Court has on numerous occasions cited below, held that where the state taxing officials fail to assess property for taxation on a uniform standard of valuation, as required by the assessment laws and constitutional provisions, and where such failure is due to a purposeful discrimination, it is unlawful and unconstitutional. We believe the latest pronouncement of this Court is found in *Snowden* v. *Hughes, et al.*, (*supra*), in which Mr. Chief Justice Stone, in rendering the majority opinion, stated, in part:

> "Another familiar example is the failure of state taxing officials to assess property for taxation on a uniform standard of valuation as required by the assessment laws. It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, by a systematic under-valuation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute. *Coulter* v. *Louisville & N. R. Co.*, 196 U. S.

599, 607, 609-10; *Chicago B. & Q. Ry. Co.* v. *Babcock*, 204 U. S. 585, 597; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353; *Southern Ry. Co.* v. *Watts*, 260 U. S. 519, 526. Such discrimination may also be shown to be purposeful, and hence a denial of equal protection, even though it is neither systematic nor long-continued. *Cf. McFarland* v. *American Sugar Co., supra.*"

Note by this Court:

"See also *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 36; *Sioux City Bridge Co.* v. *Dakota Co.*, 260 U. S. 441, 447; *Bohler* v. *Callaway*, 267 U. S. 479, 489; *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23, 25, 28; *cf. Great Northern Ry.* v. *Weeks*, 297 U. S. 135, 139."

The Supreme Court of Appeals of West Virginia, as we have above set forth herein, stated that the appellants strongly relied upon the case of *West Penn Power Co.* v. *Board of Review and Equalization*, 112 W. Va. 442, 164 S. E. 862. That case was decided mainly upon the reasoning of *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. Ed. 340, with the West Virginia Court reciting that the latter case held where a taxpayer's property is taxed at 100% of its true and actual value, it is his right to have his assessment reduced to the percentage of values at which other properties of the same class in the same governmental unit of the United States are taxed, "even though the statute requires that all property be taxed at its true and actual value." The Supreme Court of Appeals of West Virginia was correct in stating that the appellants relied upon the *West Penn* case and upon the decisions of the Supreme Court of the United States which were therein cited and relied upon by the Court.

The Supreme Court of Appeals of West Virginia, in substance, frowns now upon the decision in the *West Penn* case, and states directly in its opinion, that the cases of the United States Supreme Court relied upon therein are in substance overruled by *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254.

We respectfully submit that that case last cited does not overrule the former decisions of the Supreme Court of the United States upon the point in question.

As Mr. Justice Frankfurter carefully set out in the opinion:

> "All Tennesee property is subject to such a tax; but there are two schemes of procedure for making assessments, one for public service corporations and one for other taxpayers. As to ordinary property the task of valuation rests upon officials of the various counties. For public service corporations the assessments must be made by the Railroad and Public Utilities Commission, which is commanded to ascertain the 'actual cash value' of corporate property situated in Tennessee."

This same scheme of taxation applies in West Virginia, whereby the properties of public utilities are assessed for taxation by the Board of Public Works (see Article 6 of Chapter 11, Code of West Virginia, particularly Sec. 11), and other property is assessed by the assessors in each county (see Articles 3, 4 and 5 of Chapter 11, particularly Section 2 of Article 3). In the *Nashville* case the question there raised was whether there was discrimination by virtue of the taxation of the public utilities at one valuation by the board created for that purpose and taxation of properties by the county assessors at a lower valuation. It was there stated that this differentiation in valuation by the two different methods of taxation had continued

for more than forty years. The Court, through Mr. Justice Frankfurter, then stated:

> "It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrimination. Its asserted grievance is common to the whole class. We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. (Citing Raymond v. Chicago Union Traction Co.; Sunday Lake Iron Co. v. Wakefield; Sioux City Bridge Co. v. Dakota County; Bohler v. Callaway; Cumberland Coal Co. v. Board of Revision; Iowa-Des Moines Nat. Bank v. Bennett.) All these cases are inapposite. None denied power to a state to apply different yardsticks to different classes of property. Equally irrelevant are those cases in which this Court, because of the nature of the litigation, was construing the uniformity clause of a state constitution, and was not applying the Fourteenth Amendment."

Therefore, the problem presented in that case was entirely different from the problem in the instant case, and we respectfully contend that the Supreme Court of the United States itself distinctly held that they were not overruling those cases which we contend apply to the instant situation.

We further respectfully contend that our case is directly within the exception noted by Mr. Justice Frankfurter, in that the Constitution of West Virginia provides for certain taxpayers to be in Class I, and states that all taxation shall be equal and uniform, and that when a discrimination, uniform and systematic, is made against a taxpayer within that Class I in favor of other taxpayers within that class, that this is unlawful and unconstitu-

tional. Furthermore, in Section 1 of Article 5, of Chapter 11, under the heading "What Personal Property Taxable," the statute provides that "All personal property of person residing in this state * * * shall be entered in the personal property book, and *shall be subject to equal and uniform taxation* * * *."

It is further respectfully submitted that the Supreme Court of the United States, in *Snowden* v. *Hughes*, 12 U. S. L. W. 4144, hereinabove cited, specifically held, in the opinion by Mr. Chief Justice Stone, and in the concurring opinion by Mr. Justice Frankfurter, that the cases cited by the Supreme Court of Appeals of West Virginia, as being overruled, were specifically still in effect.

The Supreme Court of West Virginia apparently took the position, in its opinion, that if the constitutional provisions, both state and federal, requiring uniformity of taxation and a lack of discrimination between citizens and taxpayers, were in conflict with the statute requiring assessment at true and actual value of certain taxpayers' properties, that the proper way to determine assessments would be to raise the assessments of all of the taxpayers who were being given a lower assessment, instead of lowering the assessments of the taxpayers who were discriminated against.

This is an erroneous assumption by the Supreme Court of Appeals of West Virginia, and an erroneous declaration of the law, as decided by this Court.

We quote but two relevant parts of decisions from the Supreme Court of the United States, and for the purpose of brevity merely cite other decisions which are among the multitudinous decisions sustaining our contention.

In *Sioux City Bridge Co.* v. *Dakota County*, *supra*, the Supreme Court of the United States stated:

"This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska Supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

In the case of *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 61 L. Ed. 1280, syllabus 7 of that case states:

"The requirement of Ky. Const., Sec. 172, that all property 'shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale,' will not prevent injunctive relief against steps looking to the enforcement of certain state and local so-called franchise taxes, based upon an assessment of the intangible property of a public service corporation by the State Board of Valuation and Assessment at not more than its fair cash value, *where the local assessing officers charged with valuing other classes of property systematically undervalue such property*, since to apply to one class of property the standard of fair cash value, systematically departed from with respect to other classes of property, would frustrate the principal object of that section, which, in view of the provisions of Sec. 171 and 174, requiring uniformity of taxation in proportion to value, and an identical rate as between corporate and individual property, must be deemed to be equal taxation." (Italics supplied.)

In the *West Penn case* above cited, syllabus 2 thereof, which was law in West Virginia, holds:

> "Under the Fourteenth Amendment of the Constitution of the United States it is the right of a taxpayer whose property is taxed at one hundred per centum of its true and actual value to have his assessment reduced to the percentage of that value at which other properties of the same class in the same governmental unit of taxation are taxed, even though the statute requires that all property be taxed at its true and actual value."

In *Cummings* v. *Merchants' National Bank of Toledo*, 101 U. S. 157, 25 L. Ed. 903, Mr. Justice Miller stated:

> "Independently of this Statute, however, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

See also:

Raamond v. *Chicago Union Traction Co.*, 207 U. S. 20, 52 L. Ed. 78;

Bohler v. *Callaway*, 267 U. S. 479, 69 L. Ed. 745;

Cumberland Coal Co. v. *Board of Revision*, 284 U. S. 23, 76 L. Ed. 146;

Booneville National Bank v. *Schlotzhauer* (Mo.), 298 S. W. 732, 55 A. L. R. 489;

Knox v. *Southern Paper Co.* (Miss.), 108 So. 288;

Randals v. *State* (Tex.), 15 S. W. (2d) 715;

Pacific Telephone Co. v. *W.* (Wash.), 34 P. (2d) 751;

Peninsula Power Co. v. *W. T. Co.* (Wis.), 218 N. W. 371;

People v. *G. T. W. R. Co.*, 357 Ill. 493, 192 N. E. 645;

3 A. L. R. 1317, Note;

28 A. L. R. 983, Note;

55 A. L. R. 503, Note.

Conclusion

We therefore respectfully submit that the decision of the Supreme Court of Appeals of West Virginia affirming the decision of the Circuit Court of Kanawha County, West Virginia, should be reversed, and that the finding and order of the County Court of Kanawha County, ex officio Board of Review and Equalization, should be reinstated.

Respectfully submitted,

J. Campbell Palmer, III,

Koontz & Koontz,

Counsel for Appellants.

APPENDIX

Chapt. 11, Art. 3, Sec. 14(a):

"Assessment of Capital and Realty of Building and Loan Association, and Federal Savings and Loan Association.—The capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value, according to the rules prescribed by this chapter, to such building and loan association or federal savings and loan association in the county, district and town where such association is located: Provided, however, That such shares and such accounts held by the United States government or any of its agencies shall not be included in determining the assessment. The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such association to any officer of this state or the United States, from actual sales of such investment shares and investment accounts, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources.

"The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete record of all such investment shares and investment accounts, which shall be open to the inspection of the assessors of the counties, and the state tax commissioner or his assistants; and such secretary or officer shall an-

swer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and concerning the value of such investment shares and investment accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes levied and assessed upon the capital of every such building and loan association and federal savings and loan association, represented by the true and actual value of such investment shares and investment accounts as aforesaid, shall be paid by such association in the same manner and at the same time as other taxes are required to be paid in such county, district and town.

"The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of such investment shares and investment accounts, but in ascertaining the true and actual value of such capital as represented by such investment shares and investment accounts as aforesaid, the assessor shall take into consideration all earned reserves and undivided profits of any such association. And if the title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or bank company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the market value of the investment shares and investment accounts of such association. Every such association shall make a

return to the assessor as of the first day of the assessment year."

Chap. 11, Art. 3, Sec. 1:

"Time and Basis of Assessments; True and Actual Value; Default; Reassessment; Special Assessors.—All property shall be assessed annually as of the first day of January at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. The taxes upon all property shall be paid by those who are the owners thereof on that day, whether it be assessed to them or others. If at any time after the beginning of the assessment year, it be ascertained by the tax commissioner that the assessor, or any of his deputies, is not complying with this provision or that he has failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at its true and actual value, the tax commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making such assessment

and correction of values, the tax commissioner may appoint one or more special assessors, as necessity may require, to make such assessment in any such county, and any such special assessor or assessors, as the case may be, shall have all the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or them. The tax commissioner shall, with the approval of the board of public works, fix the compensation of all such special assessors as may be designated by him, which, together with their actual expenses, shall be paid out of the county fund by the county court of the county in which any such assessment is ordered, upon the receipt of a certificate of the tax commissioner filed with the clerk of the court showing the amounts due and to whom payable, after such expenses have been audited by the county court.

"Any assessor who knowingly fails, neglects or refuses to assess all the property of his county, as herein provided, shall be guilty of malfeasance in office, and upon conviction thereof, he shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than three nor more than six months or both, in the discretion of the court, and upon conviction, he shall be removed from office."

Const. of West Virginia, Art. X, Sec. 1:

"Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species

of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including live stock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other such property situated within municipalities, two dollars; and the legislature shall further provide by general law, for increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty per cent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty per cent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including live stock, employed exclusively in agriculture as above defined while

owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation, incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the State now existing."

Sec. 1 of the 14th Amendment to the Const. of the U. S.:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

REPLY BRIEF

KOONTZ & KOONTZ, J. CAMPBELL PALMER, III,
Counsel for Appellants.

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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REPLY BRIEF

THE ERRORS OF LOGIC OF THE COURT BELOW AND OF THE APPELLEE HEREIN

Appellants respectfully submit that the Supreme Court of Appeals of West Virginia has used reasoning which is *non sequitur*, and phraseology and terminology which is misleading, and that the Attorney General of West Virginia, in his brief on behalf of the Tax Commissioner, appellee herein, has followed the lead of that court.

In substance, the Supreme Court of Appeals of West Virginia, as well as the Attorney General, has stated that

although the Assessor of Kanawha County allowed a deduction from market value of approximately 30% in valuing the personal property of taxpayers in Class I, other than these appellants, he was in reality not giving a 30% "discount or deduction," but was merely using a formula to arrive at the correct "true and actual value" of these properties of other taxpayers, as required by the statute.

This is exemplified in the Supreme Court's opinion (S. J. 45), in the following sentence:

> "We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value."

On page 6 of his brief, the Attorney General, in subparagraph (4), states:

> "The discount as to intangibles was not allowed from the true and actual value, but was allowed from face value in an effort to reach true and actual value."

Again, at page 4 of the Attorney General's brief, he states:

> "The record discloses that the assessor, in valuing notes, open accounts, bonds, household goods, livestock, real estate, and other species of property, allowed generally a percentage deduction (approximately 30%) of the face value, book value, purchase value or cost value in order to arrive at true and actual value for assessment purposes (R. 58, 59, 60, 62). Such official did not allow a 30% deduction of true and actual value. On the contrary, the deduction allowed by him was to arrive at or determine what he believed to be the true and actual value."

We believe the illogical reasoning above is closely associated with the statement made on page 14 of the appellee's brief, in which he states:

> "The statutes relating to the valuation or assessment of money, notes, accounts, bonds, household goods, livestock and many other types of personal property owned by individuals set forth no specific method of ascertaining the value thereof which is comparable with the statute involved herein."

We respectfully submit that the error in reasoning of both the Supreme Court of Appeals of West Virginia and of the Attorney General is founded upon a misleading or misunderstanding of the statute herein involved, as well as the other statutes of West Virginia relating to the assessment and taxation of other property within Class I. This misunderstanding of the statute is particularly shown in the opinion of the Supreme Court of Appeals of West Virginia. That Court apparently failed to realize that the statute in question dealt with the *"capital stock"* of a building and loan association, and not with its *"assets"* or, as the Attorney General stated, with its *"property"*. So that there may be no misunderstanding, we again quote the pertinent part of Section 14(a) of Article 3, Chapter 11, as follows:

> "The CAPITAL of every building and loan association * * * as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its *true and actual value*, according to the rules prescribed by this chapter, * * *. *The real and actual value* of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such as-

> sociation * * * from actual sales of such investment shares and investment accounts, from answers to questions by the assessor * * *, or from other trustworthy sources."[1]

To show that the assessor also was required to determine the values of all other personal property for assessment purposes, in substantially the same manner, we quote the pertinent parts of Section 1, Article 3, Chapter 11, as follows:

> "*All property* shall be assessed annually * * * at its *true and actual value*; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. * * *."

We respectfully submit that there is no difference in substance in these two statutes, and that the assessor is required to fix the value of the *capital stock* of building and loan associations and the value of the property of all other taxpayers, at their *market value*, as closely as that can be ascertained.

With the two statutes in view, we believe the error in reasoning of the Supreme Court of Appeals of West Virginia becomes apparent. That Court stated (S. J. 40):

[1]All emphasis in this brief has been supplied by counsel, unless otherwise specifically stated.

> "Appellants have produced testimony tending to show that other classes of property, such as real estate, oil and gas properties, automobiles and household goods are assessed at less than their true and actual value in Kanawha County. WE THINK THIS TESTIMONY MUST BE DISREGARDED."

Here is the key to the illogical reasoning of the Supreme Court of Appeals of West Virginia. That court disregarded the testimony concerning a 30% minimum discount from cost or market value being given by the assessor, in arriving at assessment values for all of the properties of taxpayers which it mentions. It then sets forth the testimony of the Assessor of Kanawha County concerning his method of valuing money, accounts receivable, installment accounts, livestock and agricultural products, notes and bonds.

The Court then (S. J. 42) states:

> "We run into a situation impossible of solution when we attempt to make any comparison as between the assessments of live stock, agricultural equipment and farm products on the one hand, and *secured assets of a bank or building and loan association on the other.*"

There is the fallacy of reasoning. If the Court had realized that it was comparing the *market value* of live stock, farm products and agricultural equipment with the *market value* of the *capital stock* of building and loan associations, there was an immediate solution, and it was the failure to realize this that led that Court into its error.

The Court went on to state (S. J. 42, 43):

> "That the *assets* of the appellants are made up of high-grade securities will not be denied. There

> is and can be no reasonable doubt as to their being worth one hundred per cent of their face value. * * * Such a class of assets is, of course, clearly distinguishable from the ordinary run of notes and accounts. * * *"

The Court then (S. J. 43) goes on to state that as a practical matter you cannot get the absolute value of all property, but it fails to realize that the *market value* of practically all property can be and should be readily ascertainable.

The Court then (S. J. 44) went on to state that as to notes and accounts, assessors cannot attain perfection in their valuation and are driven to adopt a formula, and that "the results may not be entirely fair to other taxpayers." The Court then stated:

> "As has been stated above, the *assets* of each of the appellants were originally selected after the most rigid test as to its value, and care taken to guard against the fluctuation in values of properties securing such *assets*. Clearly, as relates to safety and security it is a different type of *property* from the ordinary note or account. Why, therefore, should we be asked to reduce an assessment below its true value, merely because as to other property, the value of which is uncertain, and by reason of its character cannot be accurately determined, assessing officers have, in good faith, adopted a plan for arriving at an estimated value?"

We think the error of the reasoning of the Supreme Court of Appeals of West Virginia now becomes plain. It attempted to see whether there was a difference in the market value of the bills and notes held by building and loan associations and the market value of those held by individuals, persons or corporations doing a small loan business, and the market value of other types of proper-

ties. The Court did not attempt to ascertain whether there was a discrimination between the valuations at *market value of the bills and notes, bonds and stockks*, held by other individuals and corporations with the *market value of the capital stock* of these appellants, as was required by the statutes, but instead attempted to compare the value of assets or property owned and held by building and loan associations with the values of other types of property owned by other individuals and corporations. This was the Court's real error, and was directly responsible for its erroneous, prejudiced and discriminatory opinion and decision.

It is well known to this Court that the book value of the assets of a corporation is no criterion as to the market value of its stock. In times of inflation, the market value of the stock frequently greatly exceeds the book value of the assets of a corporation, and in times of depression the book value of corporations frequently greatly exceeds the market value of the stocks of those corporations. Presumably the Legislature of West Virginia, when it enacted the respective tax statutes, was also aware of this.

The statutory requirement for fixing assessed values for the capital stock of building and loan associations is the price which that stock will bring in the open market. To ascertain if there has been a discrimination made, that market value of the capital stock of building and loan associations should be compared with the market value of all other properties in the same category, that is, the market value of not only bills and notes, stocks and bonds, but the market value of furniture, live stock, real estate, gas and oil, coal, and other similar property.

If, then, the assessor, after ascertaining the market value of all these other properties of other taxpayers, gives a deduction from the market value thereof before fixing the values for assessment purposes, and fails to

give an equal deduction from the market value of the capital stock of building and loan associations, before fixing these values for assessment purposes, *then a discrimination does exist.*

That the Attorney General of West Virginia, in his brief on behalf of the appellee herein, followed the error of the Supreme Court of Appeals of West Virginia, is shown on page 9 of his brief:

> "The *property* of a building and loan association is unquestionably of a distinctive class, and of a peculiar nature, as held by the court below * * *. The assessor, by applying the method of valuation prescribed in said section, ascertained the value of the *personal property* of appellants for the year in question, for taxation purposes."

and again on page 10:

> "The Assessor of Kanawha County valued the *properties* of appellants for taxation purposes * * *."

and

> "Appellants do not contend that the assessment for 1941 exceeds the true and actual value of their *property.* No claim is made that appellants' property is singled out * * *."

WAS DISCOUNT GIVEN OTHER TAXPAYERS, AND WERE APPELLANTS DISCRIMINATED AGAINST?

We respectfully submit that we can conclusively demonstrate to this Court, from the evidence in the record before it, that the Supreme Court of Appeals was in error, and likewise the Attorney General of West Virginia in his brief, in stating that the assessor, as to properties of taxpayers other than appellants, allowed the deduc-

tion of 30% *to arrive at* "true and actual value," rather than as we contend, *from* "true and actual value." We believe that we can conclusively prove from the evidence in the record that the assessor ascertained "market value," and then allowed a 30% deduction to arrive at "assessed value," and we respectfully submit that from the statutes in question "market value" and "true and actual value" are, and were meant by the Legislature of West Virginia to be, synonymous terms.

Even though it may be repetitious, we submit exact quotations from the evidence in the record to sustain our conclusions.

Under *cross-examination* by the attorney representing the Tax Commissioner, at the hearing before the County Court of Kanawha County, as shown at R. 144, Mr. Wilkinson, the deputy assessor in charge, was asked the following questions and made the following answers:

> "Q. Now, Mr. Wilkinson, in testifying that you assess different classes of property at various percentages of the true and actual value, is it not necessary *first to establish the true and accurate value* of such properties in order to determine the true and actual value at which you state you assess them?
>
> "A. We attempt to establish the cost price and then to establish our assessment value accordingly.
>
> "Q. It is necessary then to establish your true and actual value first, is it not, or what you consider as a proper value?
>
> "A. I will say 'a proper value', yes.
>
> "Q. Mr. Wilkinson, further with reference to the percentages of assessed value used by you in relation to the true and actual value, I believe that

you testified that you valued all accounts receivable at 70% of the face and installment accounts at 65% of the face or book value; live stock at 50% of the purchase value, if it could be established, and if not, it was left to the judgment of the deputy assessor who was assessing such property; and that you assessed bonds and notes at 70% of face value. What particular type of bonds did you have reference to or what bonds do you have here to assess?

"A. If I said face value I meant to say market value in the case of bonds. I have reference to bonds of private corporations, not United States bonds."

This shows conclusively, we submit, that the assessor did establish cost price or "market value" and then took a deduction therefrom, to ascertain the assessed valuations for the properties of all taxpayers other than the appellants.

The assessor himself stated that there was an attempt made by his office to give this 30% discount to taxpayers of the same class, and to do so uniformly. (See R. 148-149.)

"Q. * * * and you further testified that had you not used the values suggested and requested by the Tax Commissioner that the valuation would have been approximately 30% less than the valuation actually made against the properties of such associations for the year 1941. I will ask you how you determined that when, according to your testimony, you had not examined the returns, or at least the returns of some of these associations, for the year 1941?

"A. Because it has been our regular procedure, and we have attempted to adhere in our business in

> having *uniformity* between building and loan companies, shall loan companies, wholesale houses, garages, grocery stores, hotels, insurance agencies and various other offices and business of all kinds."

Again we think the evidence conclusively proves our contention, at R. 133:

> "Q. Mr. Wilkinson, I believe you have previously testified that your practice in Kanawha County was to assess property in general, with the exception of money, at about 70% of its *actual value*, or to allow a discount of approximately 30%, is that correct?
>
> "A. For intangibles, yes, sir.",

which is substantiated by other testimony of the same deputy assessor, at R. 56:

> "Q. A short time ago in testifying with respect to the Charleston Federal Savings & Loan Association and its return marked Exhibit No. 2, you stated that the deduction of 30% was in accordance with the method used in Kanawha County in assessing personal property, is that correct?
>
> "A. Not all classes of personal property, but intangibles, yes."

We will not repeat the testimony given by the assessor at R. 57, except that it is there conclusively shown, we submit, that a discount was given from the market value of cost price of certain classes of property by the assessor, which was a minimum discount of 30%, and that this discount was not given to arrive *at* "true and actual value," but was given *from* such value to arrive at the value for assessment purposes.

This is conclusively shown, we again submit, by the answer of the assessor that live stock "is valued at approximately 50% of the purchase price," and upon being

asked how that purchase price was ascertained, the assessor answered: "By asking the farmer what he paid for a plow or cattle or livestock * * *." (R. 57.)

When admittedly appellant's capital stock was valued at 100% of its market value, how can it be seriously contended there was no discrimination against these appellant taxpayers?

The appellee, at page 5, subparagraph (3), states:

> "The evidence does not disclose that Class I intangible property in Kanawha County for the year 1941 was assessed at less than its true and actual value.",

and this is a subparagraph under the main heading, "Findings of Fact by Supreme Court of Appeals of West Virginia." We respectfully submit that that statement is inaccurate, as shown above and even by the opinion of the Supreme Court of Appeals of West Virginia (S. J. 44):

> "In many instances notes and accounts worth full value may be assessed at less than their value and, in individual cases, a clear case of discrimination may be shown to exist.",

and at S. J. 45:

> "The more or less arbitrary allowance of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. *We think it was.*"

In any event, in neither the statutes nor Constitution of West Virginia can there be found any right or authority in the Supreme Court of Appeals of West Virginia to make findings of fact. We are sure there is no need to cite the many West Virginia cases to the effect that the Supreme Court of Appeals of West Virginia is solely an

appellate court (except in instances of original jurisdiction), and is bound by the facts decided by the statutory courts and fact-finding bodies below, unless those facts, from the record before the Court, clearly appear to be erroneous.

In this case, in any event, the West Virginia statutes provided for the County Court of Kanawha County, whose duty it was to hear the witnesses, consider the evidence, and decide the facts of the case. This Court is not composed of lawyers, but of lay persons, and the hearing of appeals from assessments is but one of its many statutory duties.

That fact-finding body, whose duty it was to find the facts, and who did find the facts in the instant case, held that the assessed valuations of the properties of the four protestants (now these appellants) "are in excess of the true and actual values of the respective properties of the said four protestants, respectively, *and that the assessed valuations aforesaid of the said properties of the said petitioners and protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are discriminatory and not uniform and equal,* * * *." (R. 43.)

And because of these findings of fact, the County Court reversed the findings made by the assessor at the express direction of the Tax Commissioner, appellee herein, and allowed these appellants the 30% discount or deduction which the assessor had stated he had given to all other similar taxpayers.

We therefore submit that the statement made in appellee's brief, at pages 4 and 5:

> "Counsel likewise assume that there has been a deliberate and intentional discrimination against

> appellants in the assessment of their property for the year 1941, notwithstanding the fact that the Supreme Court of Appeals of West Virginia expressly found to the contrary."

is an erroneous statement, in that the Supreme Court in West Virginia stated (S. J. 44):

> "On the record before us, we do not believe a *clear case* of discrimination has been shown."

and (S. J. 50):

> "Our holding goes no further than this: What has been shown with reference to the assessment of intangible property in Kanawha County, of types other than that owned by the appellants is insufficient to establish a case of discrimination, which would justify us in applying the principles announced in *West Penn Power Co.* v. *Board of Review and Equalization*, 112 W. Va. 442, 164 S. E. 862."

However, the Court did hold at S. J. 50:

> "Discrimination in the assessment of property of the same type, in the same taxing district *cannot be defended*, and we do not mean to defend such a practice in any sense. We think money and solvent securities should be assessed at their face value, and we think the *arbitrary practice of allowing a certain reduction from the face value of notes and accounts should be discontinued so far as possible*, * * *."

We therefore submit that in this case discrimination has been proven to exist, and as we show below, that it was an intentional and deliberate discrimination against the appellant taxpayers.

WAS THE DISCRIMINATION INTENTIONAL?

On page 14 of the appellee's brief, it is stated:

> "Even though certain other species of property may have been undervalued by the assessor for taxation purposes, appellants cannot complain in the absence of a showing of fraud, or a *general intentional system of valuation* designed to produce inequality. It is only in clear and hostile *intentional discrimination* against particular persons and classes, especially such as are of an unusual character, that the court will give relief.
>
> "There has been no showing in this case of any fraud or partiality on the part of the assessor or the state tax commissioner; no intention to discriminate between the property of the building and loan association and other species."

With this statement we again most respectfully disagree, and again submit that the evidence is conclusive that the discrimination was planned and intentional, and was made at the express direction of the Tax Commissioner, appellee herein, and over the objection of the Assessor of Kanawha County.

Even the Supreme Court of Appeals of West Virginia in its opinion so stated, in the following words (S. J. 42):

> "The testimony shows that the assessor in fixing the value of Class I property, employed a uniform and systematic plan as to the different types of property included in the general Class I classification: *Therefore, no question of error of judgment is involved.* WHAT THE ASSESSOR DID WAS INTENTIONAL AND FOLLOWED A PRECONCERTED PLAN, and, this being true, is discrimination against the appellants clearly shown?"

Again, turning to the record, the assessor (R. 73) stated that if he had followed the method in valuing appellants' capital stock, which he used in assessing the valuations for other personal property in Class I, and allowing the same percentage deductions therefrom, he would have arrived at different figures; and had he not received specific instructions from the Tax Commissioner's office to do otherwise, he would have arrived at those different figures, and would have valued the property of appellants at approximately 30% less.

When asked why he assessed the property of appellants at the figures at which he did, which were the amounts appealed from, the deputy assessor of Kanawha County stated (R. 54-55):

> "A. Because we received instructions from the Tax Commissioner's office to use these sheets and to make no changes in them whatsoever.
>
> "Q. Did you at first agree to accept those valuations as fixed by the State Tax Commissioner's office?
>
> "A. I did not agree at first, no, sir.
>
> "Q. Why did you later?
>
> "A. Because of *the order by the Tax Commissioner's office*, and I thought we had better probably do as he instructed."

And in view of his answer (R. 51) that he believed "the return (made by appellants) with the addition of the reserves *less than 30% discount* would be the more *equitable* assessment" for appellants' properties, we submit the issue of a purposeful and wilful discrimination is conclusively decided in favor of the appellants.

FURTHER REPLY TO APPELLEE'S BRIEF

On page 12 of appellee' brief, it is stated:

> "In referring to intangibles, such as notes and accounts, such official (assessor) stated that he allowed in this county (Kanawha) a discount of 30% from the face value thereof. He apparently was not referring to notes belonging to state and national banks because no discounts were allowed in their assessments."

Again, the error in reasoning, as to that which was the subject of taxation, is disclosed by that statement.

In Section 14(a) of Article 3, Chapter 11, Code of West Virginia, with reference to the taxation of banks, it is stated:

> "*Shares of stock* in a banking institution * * * shall be assessed * * *."

Therefore, the property underlying those shares of stock of banks, and the property underlying the capital, as represented by investment shares and investment accounts, of building and loan associations, cannot be considered for purposes of comparison; the only true comparison would be the market values of the respective shares of each such type of institution, and the assessed values thereof as fixed by the assessor.

The Supreme Court of Appeals of West Virginia, at S. J. 41-42, stated:

> "There is no showing (from the record in this case) as to the method employed in the assessment of the assets of trust companies and commercial banks, * * *."

As a matter of fact, the shares of stock in banks are assessing according to a very involved formula, worked

out by agreement between the banking institutions and the Tax Commissioner, and has no comparable basis to the assessing and taxing of either building and loan associations or the assessing and taxing of other property within Class I; and for that reason the evidence concerning such formula, and the manner of assessing the taxes on the shares of stock of banking institutions, is singularly lacking in the evidence, as at the time both parties undoubtedly considered it of no importance to the instant case, and as having no basis for comparison purposes in the instant situation.

Appellee, at pages 10 and 11 of his brief, cites the case of *Nashville, C. & St. L. Railway* v. *Browning*, 310 U. S. 362, 367, 84 L. Ed. 1254, 1257, as binding in the instant case.

We have heretofore in our main brief (pages 25-26) distinguished that case from the instant situation.

May we submit a further distinction. As stated in *Petersburg Gas Co.* v. *City of Richmond*, 132 Va. 82, 110 S. E. 533, 539, 28 L. R. A. 522, the word "value" has a peculiar meaning in determining the basis on which a *public service company* is entitled to return, and means only the amount upon which the return should be computed, not the *value* of the property as an income producing instrument, nor the *price* at which it would sell.

We think there is no need to cite authority that public utility corporations, such as Mr. Justice Frankfurter was discussing in the Nashville case, use one set of "values" for assessment purposes, which are always greatly lower than the set of "values" based on the same property, which are used in rate-making purposes. We respectfully submit that this Court probably had that thought in mind in deciding the Nashville case, that is, that the assessed values of public utilities are in practically no

instances their intrinsic worth or their sale price, or what would be termed under the West Virginia statute, their "true and actual values"; that, however, public utilities, for rate-making purposes, will use exactly the same properties and arrive at substantially higher figures upon which to base their charges to the public.

Therefore, the question which arose in the Nashville case, of a statutory body laying assessments upon public utilities, which were different from the assessments levied by county assessors upon other classes of property, we believe is a distinct and different problem from a county assessor, by order of a Tax Commissioner, levying different and discriminatory assessment and tax rates upon taxpayers in the same classification and category.

This, we submit, distinguishes the Nashville case from the present case, and is further proof of illegal and unconstitutional purposeful discrimination in the instant case, where none was said to exist in the Nashville case.

JURISDICTION

There is, of course, no contention by appellants but that Section 14(a) is on its face fair and constitutional, (as is Section 1); but these appellants contend that the interpretation of that statute by the Tax Commissioner of West Virginia, and this interpretation enforced, at his orders by the Assessor of Kanawha County, which interpretation and enforcement were sustained by the Supreme Court of Appeals of West Virginia, the court of last resort of that State, thereby makes that statute unconstitutional and deprives these taxpayers of their federal constitutional rights.

With reference to the subject of jurisdiction, we have heretofore filed a brief on that subject, and have therein

cited to this Honorable Court the cases wherein similar questions were heard upon appeal to this Court.

We have also printed for the use of this Court the "Memorandum Opinion" of the presiding Judge of the Supreme Court of Appeals of West Virginia who allowed the appeal. We are advised that this is the first appeal to this Court ever allowed by a presiding Judge of the Supreme Court of Appeals of West Virginia; because of that, the Judge presiding when the appeal was granted, made an exhaustive study of both this case, with which he was already familiar, and the authorities which allowed him to grant such an appeal.

Because of his familiarity with this case upon its original presentation in the Supreme Court of Appeals of West Virginia, upon its presentation for a rehearing and upon its presentation for the allowance of an appeal, this presiding officer was peculiarly fitted to pass upon the question as to whether the appeal should be allowed. Naturally, of course, this Court has the right to review the granting of an appeal by any court, or presiding officer of any court, below; but where a matter has been studied so exhaustively below, and the appeal was allowed only after that exhaustive study, and a memorandum of authorities sustaining the right of that presiding officer to grant the appeal was prepared and filed, wherein was stated the opinion that the granting of the appeal was within all of the rules prescribed by this Court, we respectfully submit that such finding should not be able to be successfully attacked on the ground that the appeal was allowed frivolously, and that no substantial question was raised.

We therefore again submit, this case is properly before this Honorable Court.

CONCLUSION

Therefore we respectfully urge this Court to reverse the decision and judgment below, and affirm the judgment and order of the County Court of Kanawha County, heretofore rendered in favor of these appellants.

Respectfully submitted,

KOONTZ & KOONTZ, J. CAMPBELL PALMER, III,

Counsel for Appellants.

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AUG 26 1944
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, AND EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellants,

vs.

GEORGE P. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA.

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

MOTION TO DISMISS AND STATEMENT AGAINST JURISDICTION.

IRA J. PARTLOW,
Acting Attorney General
of West Virginia,
KENNETH E. HINES,
Assistant Attorney General
of West Virginia,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

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Appellants,

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GEORGE P. ALDERSON, STATE TAX COMMISSIONER OF WEST VIRGINIA.

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

MOTION TO DISMISS AND STATEMENT AGAINST JURISDICTION.

Motion to Dismiss the Appeal.

The appellee in the above entitled action now files his motion and hereby moves to dismiss the appeal granted on the 21st day of July, 1944, by the Honorable Hershel H. Rose,

President of the Supreme Court of Appeals of West Virginia, upon each and every of the following grounds:

1. Appellants proceed upon the theory that a deliberate and systematic discrimination by the Assessor of Kanawha County is shown by the record in this case. This theory is incorrect, and is entirely unjustified by the facts. It appears from the record in this case, and it was affirmatively decided by the Supreme Court of Appeals of West Virginia, that no deliberate and systematic discrimination was practiced.

2. The alleged federal question is frivolous and insubstantial.

3. The alleged federal question does not concern the validity of a state statute, but directly concerns the administration of a state statute which appellants have never contended is invalid. What they contend is that the assessor, in administering the state statutes, has discriminated against appellants in such a way as to deny to them equal protection of the laws.

4. The appeal was improvidently awarded.

Wherefore, the appellee prays that said action and said appeal heretofore awarded be dismissed and that he have and recover judgment for his costs incurred herein.

IRA J. PARTLOW,
Acting Attorney General
of West Virginia.

KENNETH E. HINES,
Assistant Attorney General
of West Virginia.

STATEMENT OF APPELLEE AGAINST JURISDICTION ASSERTED BY APPELLANTS.

Erroneous Assumption of Facts by Appellants.

Appellants in their statement as to jurisdiction proceed upon the erroneous theory that there has been a deliberate and systematic undervaluation of other species or classes of property and an overvaluation of appellants' property, when as a matter of fact, and as determined by the Supreme Court of Appeals of West Virginia in its written opinion, and as shown by the record herein, there was no deliberate, intentional or systematic discrimination employed.

Appellants likewise assume that the Assessor of Kanawha County, in valuing other species or types of property for the purpose of taxation, deducted 30% of the true and actual value of such properties. The record discloses that the assessor, in valuing notes, open accounts, bonds, household goods, livestock, real estate and other species of property, allowed generally a percentage deduction (approximately 30%) of the face value, book value, purchase value or cost value in order to arrive at true and actual value for assessment purposes. Such official did not allow a 30% deduction of true and actual value. On the contrary, the deduction allowed by him was to arrive at or determine what he believed to be the true and actual value.

As a factual matter, there was no discrimination or inequality in the valuation and assessment, pursuant to statute, of appellants' personal property when compared with the method in which other intangible property in Kanawha County was valued for taxation purposes for the year 1941. The greater part of the assets of building and loan associations consists of mortgage loans or notes, secured by deeds of trust (R. 77, 96, 100). Applying the general method of the assessor of Kanawha County, in ascertaining the value

of notes and accounts, as contended by the appellants, by deducting 30% of the face value thereof, in order to obtain the true and actual value, to the uncontradicted evidence and exhibits of appellants in this case, we find the following:

Exhibit 1 of appellants shows that the personal property assessment of the Charleston Federal Savings and Loan Association, which assessment was made pursuant to statute (Code, 11-3-14a), amounts to $921,800.00 (R. 48, 186). Exhibit No. 2 thereof (R. 49, 187, 188) shows assets generally of said association amounting to $1,363,738.82 consisting, among other things, of first mortgage loans in the sum of $1,282,043.33 and cash of $52,195.90. Applying the method of the assessor, a 30% deduction of the face amount of the mortgage loans would leave an assessed valuation of $897,430.33. Adding thereto the cash item of $52,195.90, we find that, under the general method used by the assessor, the assessed value of the personal property of the Charleston Federal Savings and Loan Association for the year 1941 would have been $949,626.23, an increase over the actual assessment made pursuant to statute of $27,826.23. Wherein has there been systematic or deliberate discrimination in said assessment of the Charleston Federal Savings and Loan Association when compared with the assessment of other owners of notes and accounts in Kanawha County which are assessed under the general method used by the assessor, and which notes and accounts may not have the security of a first mortgage on real estate as do those of said appellant? Instead of being discriminated against such appellant is actually benefited by the statutory method of assessment as made.

The same is likewise true of the appellant, First Federal Savings and Loan Association. Its personal property was assessed pursuant to statute at $249,080 (Ex. 3, R. 51, 196, 215). Its assets, among other things, consist of mort-

gage loans in the amount of $333,029 and real estate notes in the amount of $11,241, which have a real and actual value, as reported in its return to the assessor (30% deducted), of $233,126 and $7,869, respectively (Ex. 4, R. 52, 213). The cash item of $15,369, appearing in said Exhibit, added thereto would constitute an assessed valuation under the general rule of the assessor of $256,364, an increase over the statutory method and actual assessment made of $7,284. Wherein was such appellant discriminated against? Instead of discrimination, it, likewise, is actually benefited by the statutory method of valuation for taxation purposes as made.

The above facts are conclusive that the personal property of appellants, Charleston Federal Savings and Loan Association and First Federal Savings and Loan Association, is not assessed or valued, for taxation purposes, near 100% of book or face value, although counsel for appellants throughout their statement assume and make statements to the effect that appellants' property is assessed at its true and actual value, while other intangibles are assessed at a percentage of true and actual value, or at a value lower than true and actual value. The intangible property of these appellants is actually assessed (pursuant to statute) for the year 1941 at a percentage of book or face value, similar to other intangible property in Kanawha County. Wherein can appellants complain?

For some reason or other the amount of mortgage loans and cash for the assessment year 1941 of the other two appellants, West Virginia Building and Loan Association, and Empire Federal Savings and Loan Association, do not appear in the record. If such information were available in this record, no doubt the results would be similar. The presumption arises, upon failure to disclose such important

facts, that there was likewise no discrimination against these two appellants.

These facts alone seem conclusive without reference to the other facts in the record that there has been no discrimination, systematic, intentional or deliberate, against appellants in applying the method provided by statute for ascertaining the value of appellants' property for taxation purposes, when compared with the methods employed by the assessor of Kanawha County in ascertaining the value of other classes or types of property for the same purpose for the year 1941.

As stated in the opinion of the Supreme Court of Appeals of West Virginia:

> "* * * We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value. The more or less arbitrary allowance of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. We think it was. Some plan which would take into account the difference between the secured notes and the unsecured notes and accounts could, and should be devised; but mere error of judgment as to the plan adopted is not sufficient to establish discrimination, where the plan, though imperfect, is adopted in a good faith effort to secure fair and equitable assessment, and equality and uniformity in taxation."

Appellants may have listed their properties for many years prior to 1941 for assessment at the face value thereof and deducted or discounted 30% pursuant to the general method employed by the assessor of Kanawha County in assessing other intangible personal property such as notes and accounts, as alleged in their statement (pages 9, 22). If such a method were now used in lieu of the statutory

method, appellants' assessment for taxation for the year 1941 would be greater than under the statutory method employed as hereinbefore mentioned. However, prior to 1940, the method of valuing personal property of appellants for taxation was the same statutory method (Code, 11-3-12, 13) applicable to all corporations taxable in the state of West Virginia. *Charleston Federal Savings & Loan Association* v. *James, Tax Commissioner*, 120 W. Va. 781, 200 S. E. 845. It was not until 1940 that the present statutory method for ascertaining the valuation of property of building and loan associations for taxation purposes was applicable. The presumption is that this statutory method is applied uniformly throughout the state in accordance with the instructions of the tax department to the assessors of the several counties of the state. (See Record, 159, 276-278.) This method was applied in Hancock County, West Virginia, for the year 1941, by the assessor of that county. See *In re Assessment Hancock County Federal Savings and Loan Association* (W. Va.), 25 S. E. (2d) 543.

The validity of the statute (Code, 11-3-14a) is not now and never has been questioned by appellants and they do not contend that the assessments of appellants' property for the year 1941 exceeded the true and actual value. They simply contend that because a method is applied in ascertaining the true and actual value of other kinds and classes of property which differs from the statutory method as applied to appellants' property and other like associations or corporations throughout the state, that a deliberate and systematic discrimination of undervaluing certain properties and overvaluing appellants' property for tax purposes has occurred. Such facts, we submit, are not supported by the record, nor by the finding of the State Court. In fact, the State Court found to the contrary.

We deem it unnecessary to cite numerous authorities of this Court to the effect that it is not the province of this Court to weigh the testimony; that a decision of the State Court on questions of fact ordinarily is not subject to inquiry in this Court; and that such findings of fact by the State Court will be disturbed only where there is no evidence to support the findings.

The Alleged Federal Question Is Frivolous and Insubstantial.

We believe that it is settled by numerous decisions of this Court that it will decline jurisdiction although the constitutionality of a state law or other Federal question is involved, where it appears that such question is not substantial (*Zucht* v. *King*, 260 U. S. 174), or "is of such an unsubstantial nature as to cause it to be devoid of all merit, and therefore frivolous" (*Deming* v. *Carlisle Packing Co.*, 226 U. S. 102), and that the assertion of a Federal right must not be wholly without foundation, but "must at least have fair color of support" (*Parker* v. *McLane*, 237 U. S. 469). Other decisions in which jurisdiction has been denied or appeals dismissed on similar grounds include: *Wabash Railroad Co.* v. *Flannigan*, 192 U. S. 29; *United States Fidelity & Guaranty Co.* v. *Oklahoma*, 250 U. S. 111; *Ennis Water Works* v. *City of Ennis*, 233 U. S. 652.

If appellants are now attempting to urge in their statement as to jurisdiction that the statute (Code W. Va., 11-3-14a) is invalid, such question is raised too late when asserted for the first time in this court. *Wabash Railroad Co.* v. *Flannigan, supra.* The petition or application of appellants to the State Supreme Court of Appeals makes no such contention (See Record, pages 1-16).

The Supreme Court of Appeals of West Virginia has determined as a fact that there was no deliberate, inten-

tional or systematic discrimination against appellants, which fact is fully supported by the record, by reason whereof the contention of appellants that the decision of the State court does violence to any provision of the Federal Constitution is utterly insubstantial and frivolous.

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. * * * But a discriminatory purpose is not presumed, Tarrance v. Florida, 188 U. S. 519, 520, 47 L. Ed. 572, 573, 23, S. Ct. 402, there must be a showing of 'clear and intentional discrimination,' Gundling v. Chicago, 177 U. S. 183, 186, 44 L. Ed. 725, 728, 20 S. Ct. 633; see Ah Sin v. Wittman, 198 U. S. 500, 507, 508, 49 L. Ed. 1142, 1145, 1146, 25 S. Ct. 756; Bailey v. Alabama, 219 U. S. 219, 231, 55 L. Ed. 191, 197, 31 S. Ct. 145. * * *"
>
> *Snowden* v. *Hughes*, 88 L. Ed. (Adv. Op.) 347.

No claim is made that appellants' property is singled out from the property of like associations or corporations of the same class. On the contrary, the presumption arises that the assessors throughout the State followed the instructions of the tax commissioner as given to them, which instructions are in accord with the statute as construed by the State Supreme Court in the *Hancock Federal Savings & Loan case, supra.*

> "* * * It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrimination. Its asserted grievance is common to the whole class. We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. * * * All these

cases are inapposite. None denied power to a State to apply different yardsticks to different classes of property. * * *

"That the States may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate—these are among the common-places of taxation and of constitutional law. * * *"

Nashville, C. & St. L. Railway v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254.

A Question of Discrimination in Administering a Valid Statute Cannot Be Reviewed by This Court upon Appeal.

In this case appellants do not contend that the statute is invalid, but do contend that in administering the statute the assessing officials have discriminated against appellants. See appellants' statement, pages 15-16. Assuming (but not admitting) such discrimination appellants are not entitled to a review by appeal as provided by Title 28, Section 344, U. S. C. A., as amended.

"The bill contains also averments to the effect that, in administering the ordinance, the officials have discriminated against the plaintiff in such a way as to deny to her equal protection of the laws. These averments do present a substantial constitutional question. * * * *But the question is not of that character which entitles a litigant to a review by this court on writ of error (appeal).* The question does not go to the validity of the ordinance; nor does it go to the validity of the authority of the officials. * * * This charge is of an unconstitutional exercise of authority under an ordinance which is valid. * * * Unless a case is otherwise properly here on writ of error, questions of that character can be reviewed

by this court only on petition for a writ of certiorari."
Zucht v. *King*, 260 U. S. 174, 67 L. Ed. 194.

Wherefore, it is respectfully submitted that no substantial Federal question is submitted by appellants and it is urged that the appeal hereinbefore mentioned should be promptly dismissed.

Respectfully submitted,

GEORGE P. ALDERSON,
State Tax Commissioner,
By Counsel.

Ira J. Partlow,
Acting Attorney General of West Virginia.
KENNETH E. HINES,
Assistant Attorney General
of West Virginia,
Counsel for Appellee.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

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vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

BRIEF ON BEHALF OF APPELLEE

IRA J. PARTLOW,
Attorney General of West Virginia.

KENNETH E. HINES,
Assistant Attorney General,

Counsel for Appellee.

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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IN THE

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CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

VS.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

BRIEF ON BEHALF OF APPELLEE

OPINIONS BELOW

The opinion of the Supreme Court of Appeals of West Virginia is reported in 126 W. Va. 506, 30 S. E. (2d) 513, and is printed in the record at pages 314 to 329.

JURISDICTION

The jurisdiction of this court is invoked pursuant to section 237(a) of the Judicial Code, 28 U.S.C.A., section 344(a). Upon consideration of motion to dismiss and statement against jurisdiction timely filed by appellee,

this Court on October 16, 1944, ordered that jurisdiction be reserved or postponed to the hearing on the merits (R. 337).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Sections 1 and 14a, Article 3, Chapter 11 of Michie's Code of West Virginia, 1943, are contained in appendix of brief filed on behalf of appellants at pages 31 to 34.

Article X, Section 1 of the Constitution of West Virginia is contained in appendix of appellant's brief at pages 34 to 36.

Section 1 of the Fourteenth Amendment to the Constitution of the United States is contained in appendix of appellants' brief at page 36.

STATEMENT OF THE CASE

The procedure, issues and how decided, and a general statement of facts are contained in the written opinion of the Supreme Court of Appeals (R. 315-316), and in the brief of appellants, pages 2 to 11. In addition thereto, the following facts are shown by the record:

The intangible property of small loan companies in Kanawha County were valued and assessed for the year 1941 at 85% of the face value of their outstanding notes. (Wilkinson Exhibits Nos. 6-9, R. 63-68, 223-226.) These companies do a "small loan" business limited to $300.00, with individuals, taking as security generally, indorsements, liens upon automobiles, household furniture and personal property. They also take "signature loans" without any security, which loans are payable in small monthly payments (R. 92, 93, 159, 167). 85% of the face value of these notes owned by small loan companies represents generally the true and actual value

thereof, which value was ascertained and based upon conferences and detailed study and was agreed upon by the representatives of small loan companies and the State Tax Department of West Virginia (R. 158, 159, 168). This true and actual value was likewise "developed from an examination of numerous accounts of several small loan companies" by representatives of the Tax Department (R. 166). In the latter part of 1940 shortly before the assessment date in the instant case a sale of the assets of one small loan company to another was consummated in Kanawha County, the purchase price being 87% of the face value of the notes (R. 171).

Money is assessed in Kanawha County at its true and actual value (R. 57). Class I property of state and national banks for the years 1940 and 1941 in Kanawha County was valued and assessed without permitting any discount in making such assessments (R. 141).

Specific instances of the valuation for assessment purposes of real estate in Kanawha County at more than cost value or purchase value for the year 1940 and previous years is disclosed (Van Verth Exhibits Nos. 1-4, R. 172-174, 295-299). Such assessments were obtained from the land records of Kanawha County during the hearing of this case before the County Court of Kanawha County sitting as a board of review and equalization, the witness working on this matter a part of one day (R. 175).

Appellants may have listed their properties prior to 1941 at a 30% discount of their true and actual value as stated in appellants' brief, but many of the properties of like kind and character in the same group or class, namely, building and loan associations situate in Kanawha County, were assessed at a higher value, some at more than their true and actual value for the year 1940 (R. 128-131, 134, 135, Krueger Exhibits Nos. 2-13, R. 160-164, 278, 295).

The greater part of the property belonging to appellants consists of loans evidenced by notes, secured by first liens upon improved real estate, the amount of which loans generally do not exceed 50% to 60% of the value of such real estate as determined by appellants' appraisers (R. 77, 78, 96, 97, 100). Such state and federal associations are organized, regulated and examined under the supervision of agencies of the state or federal government and are required to maintain certain reserves (R. 86, 95, 104-106, 113, 114). The true and actual value of investment shares or stock of appellants exclusive of reserves and undivided profits, is always 100 cents on the dollar (R. 75-76, 82, 84, 85, 95). Each investor or purchaser of shares or stock from appellants, or either of them, is protected and insured against loss by federal agency up to an amount not to exceed $5,000.00 (R. 95).

Inaccuracies, Mistakes and Erroneous Assumptions in Brief of Appellants

Counsel for appellants assume that the Assessor of Kanawha County, in valuing other species or types of property for the purpose of taxation, deducted 30% of the true and actual value of such properties. The record discloses that the assessor, in valuing notes, open accounts, bonds, household goods, livestock, real estate, and other species of property, allowed generally a percentage deduction (approximately 30%) of the face value, book value, purchase value or cost value in order to arrive at true and actual value for assessment purposes (R. 58, 59, 60, 62). Such official did not allow a 30% deduction of true and actual value. On the contrary, the deduction allowed by him was to arrive at or determine what he believed to be the true and actual value.

Counsel likewise assume that there has been a deliberate and intentional discrimination against appellants in the assessment of their property for the year 1941, not-

withstanding the fact that the Supreme Court of Appeals of West Virginia expressly found to the contrary.

The instruction of the Tax Commissioner (R. 159, 276-278) sent to all assessors throughout the State of West Virginia in 1941 did not instruct "the assessors, in effect, to discontinue this practice of allowing a 30% minimum discount or deduction, in calculating and determining the assessment of building and loan associations," as stated in appellants' brief page 6. The evidence does not disclose that a deduction of 30% was allowed as a minimum to every taxpayer who had property in Class I or had been so allowed for many years, and was allowed to all building and loan associations as assumed in appellants' brief on pages 5, 6 and 7.

Findings of Fact by Supreme Court of Appeals of West Virginia

The written opinion of the court below discloses that it found, among other things, the following facts:

(1) A clear showing of discrimination "is not established where the showing is only that other property of a different type is assessed at less than its apparent or face value, through a process of estimation, and in a good faith effort to arrive at the true and actual value thereof." (Syl. 3, R. 314.)

(2) The business of appellants is subject to rigid and constant supervision of the state or federal government, or both, and their solvency at all times is a mandatory requirement to do business, and such group or class of properties is clearly distinguishable from the ordinary or general class or group of notes and accounts as a whole. (R. 321, 323.)

(3) The evidence does not disclose that Class I intangible property in Kanawha County for the year 1941

was assessed at less than its true and actual value. (R. 323).

(4) The discount as to intangibles was not allowed from the true and actual value, but was allowed from face value in an effort to reach true and actual value. Such effort by the Assessor of Kanawha County may have been erroneous or improper, but mistake or error in judgment in this respect is not sufficient to establish discrimination (R. 323, 324).

SUMMARY OF ARGUMENT

1. Appellants admit that Section 14a, Article 3, Chapter 11 of the Code of West Virginia is valid and constitutional but complain that, in administering such statute, the Assessor of Kanawha County has discriminated against appellants in such a way as to deny them equal protection of the laws. The question is not of that character which entitles appellants to a review by this court on appeal. It can be reviewed only on certiorari.

2. It is conclusively shown that appellants' property is not overvalued for assessment purposes. No contention is made that appellants' property is singled out and valued differently for assessment purposes, pursuant to Section 14a, Article 3, Chapter 11 of the Code of West Virginia, from the property of like associations or corporations of the same class, by reason whereof no substantial federal question is presented. Property for the purpose of taxation may be classified and different methods adopted for valuation of each class without violating the Fourteenth Amendment of the Constitution of the United States.

3. Assuming (but not admitting) that there has been an unlawful administration of statutes fair on their faces as between the property of appellants and other species or types of property as contended by appellants,

such administration thereof is not a denial of equal protection unless there is also disclosed an element of purposeful or intentional discrimination, which discrimination is never presumed. The finding of the court below is amply supported by the evidence that no showing of "clear and intentional discrimination" is disclosed in this case.

ARGUMENT

The appeal should be dismissed for want of jurisdiction.

Appellants in their brief (pages 4, 13, 21) concede that Section 14a, Article 3, Chapter 11 of the Code of West Virginia is valid and constitutional. The only question raised in appellants' brief (see pages 11, 13, 21) is that in administering such statute the Assessor of Kanawha County has discriminated against appellants.

This court does not have jurisdiction to consider such question upon appeal. In addition to the holding on this question in the case of *Zucht* v. *King*, 260 U. S. 174, 67 L. Ed. 194, quoted on pages 10 and 11 in the statement of appellee against jurisdiction, the following is noted in a later opinion of this court:

> "* * * But a judgment of a state court sustaining a tax alleged to be illegal because there has been discrimination in assessing property, can be reviewed only on certiorari. Jett Bros. Distilling Co. v. Carrollton, 252 U. S. 1, 5, 64 L. ed. 421, 423, 40 Sup. Ct. Rep. 255. This is true whether it was the determination of a state or local assessing body, or, as in the case at bar, of both combined, which is alleged to have produced the discrimination. Baker v. Druesedow, 263 U. S. 137, 68 L. ed. 212, 44 Sup. Ct. Rep. 40."
>
> In the matter of Thomas E. Williams, Tax Commissioner, 277 U. S. 268, 272, 72 L. ed. 877, 879.

The same question of discrimination which is alleged in this case arose in the Mississippi case of *Magnolia Bank* v. *Board of Supervisors of Pike County*, 111 Miss. 857, 72 So. 697, 3 A.L.R. 1365. Upon error (appeal) from the Supreme Court of the State of Mississippi to this Court, the appeal was dismissed for want of jurisdiction. See 248 U. S. 546, 63 L. Ed. 414, 29 Sup. Ct. Rep. 135.

We respectfully submit that the appeal heretofore granted should be dismissed for want of jurisdiction.

Property for the purpose of taxation may be classified and different methods adopted for valuation of different classes without violating the Fourteenth Amendment of the Constitution of the United States.

It is stated in the case of *In Re Tax Assessments Against Hancock County Federal Savings and Loan Association*, 125 W. Va. 426, 25 S. E. (2d) 543, that "The value of any class of property is under the constitution 'to be ascertained as directed by law'."

The right of the legislature to prescribe a method of ascertaining the value of different classes of property, which applies equally and uniformly throughout the State of West Virginia to such class, is not only directed by Article X, Section 1 of the Constitution of West Virginia, but has been fully recognized by the courts and by the legislature of the state. The legislature has provided different methods of ascertaining the value of certain classes of property, as fully disclosed in the opinion of the court below (R. 318). In the case of *Fox* v. *Standard Oil Company*, 294 U. S. 87, 79 L. Ed. 780, the following is observed at page 790 of 79 L. Ed.:

> "• • • The view was expressed that the standard of uniformity under the constitution of the state was substantially the same as the standard of equality under the Fourteenth Amendment of the constitution of the nation.

"Not finding that the courts of West Virginia have spoken on the subject differently, we reach the same conclusion now * * *."

See also opinion of Court below (Syl. 1, R. 314, 318, 319).

The allegation of appellants that the decisions of the court below is violative of Article X, Section 1, of the Constitution of West Virginia is a local question and does not present for review in this Court a Federal question. *Southwest Oil Company* v. *Texas*, 217 U. S. 115, 54 L. Ed. 688; *Nashville, Chattanooga & St. Louis Railway* v. *Browning*, 310 U. S. 362, 84 L. Ed. 1254.

It is well settled that, pursuant to the Fourteenth Amendment, the states may classify property for taxation and may set up different modes of valuation for each group or class. This power of the state is limited to the extent only that its classifications and methods of valuation shall be applied impartially to all the constituents of a class, so that the statute shall operate equally and uniformly upon all persons in similar circumstances. See generally Brannon on The Fourteenth Amendment, pp. 323, 324, 325, 339.

The property of a building and loan association is unquestionably of a distinctive class, and of a peculiar nature, as held by the court below (R. 327). The legislature had the right and power to classify and prescribe the method of ascertaining the value of its property for taxation purposes. This the legislature did by its enactment of Code 11-3-14a. The assessor, by applying the method of valuation prescribed in said section, ascertained the value of the personal property of appellants for the year in question, for taxation purposes. It is a matter of common knowledge that there are a large number of building and loan associations located in the State of West Virginia. It will be presumed that the

assessors of the various counties in which building and loan associations are situate performed their official duty and ascertained the value of the personal property of building and loan associations for taxation purposes, in accordance with the statute. The Assessor of Kanawha County valued the properties of appellants for taxation purposes for the year 1941, pursuant to the instruction of the State Tax Commissioner, which instruction is in accord with the statute (Code, 11-3-14a) as later interpreted and construed by the Supreme Court of Appeals of West Virginia in the case of *In Re Tax Assessments Against Hancock Federal Savings and Loan Association, supra.*

Appellants do not contend that the assessment for 1941 exceeds the true and actual value of their property. No claim is made that appellants' property is singled out and valued differently for assessment, pursuant to statute (Code, 11-3-14a) from the property of like associations of the same class. On the contrary, the presumption arises that the assessors throughout the State followed the instructions of the tax commissioner as given to them (R. 159, 276-278).

> " • • • It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrimination. Its asserted grievance is common to the whole class. We must put to one side therefore all those cases relied on by the petitioner which invoked the Fourteenth Amendment against discriminations invidious to a particular taxpayer. • • • All these cases are inapposite. None denied power to a State to apply different yardsticks to different classes of property. • • •
>
> "That the States may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some

> kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society made appropriate—these are among the common-places of taxation and of constitutional law. * * *"
>
> *Nashville, C. & St. L. Railway* v. *Browning*, 310 U. S. 362, 367, 84 L. Ed. 1254, 1257.

Had this case arisen concerning the assessments of building and loan associations and federal savings and loan associations in Kanawha County for the prior year (1940) as ascertained by the tax commissioner (R. 128-131, 134, 135—Krueger Exhibits Nos. 2-13, R. 160-164, 278-295), a clear case of discrimination between properties of the same kind and class in violation of the equal protection clauses of both the state and federal constitutions would have been presented, and the principles of the several cases cited in appellants' brief would have been applicable. However, as pointed out by the court below, those cases are inapplicable "as applied to the present controversy," the court expressly stating in its written opinion that "the cases last cited above are *distinguishable*" (R. 326). We reiterate that such cases are not applicable to the instant case as the record contains no evidence of discrimination in valuing a distinctive class and kind of property, namely, building and loan associations and federal savings and loan associations, for assessment of taxes for the year 1941 in Kanawha County or in any other county in the State of West Virginia. On the contrary, the presumption is that the tax officials have in good faith assessed all such properties in an equal and uniform manner, as required by law. *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 62 L. Ed. 1154. In view of the fact that there is no showing of discrimination in valuing property pursuant to Sec-

tion 14a, for assessment purposes of the same kind and class as that of appellants in Kanawha County, West Virginia, for the year 1941, we submit that no substantial federal question is presented.

The finding of the court below is amply supported by the evidence that no showing of "clear and intentional discrimination" is disclosed in this case between the property of appellants and other species or types of property.

Appellants rely entirely upon the testimony of the deputy assessor of Kanawha County (Brief p. 13). In referring to intangibles, such as notes and accounts, such official stated that he allowed in this county a discount of 30% from the face value thereof. He apparently was not referring to notes belonging to state and national banks because no discounts were allowed in their assessments. He must not have been referring to notes belonging to small loan companies, as the evidence is uncontradicted that they were assessed at their true and actual value in Kanawha County for the year 1941, after examinations, conferences and detailed study for the express purpose of determining their true and actual value. He must have been referring to notes and accounts generally as a class as determined by the court below. Whether these notes and accounts as generally referred to by the deputy assessor have a true and actual value of 25%, 50%, 75% or 100% of the face value thereof is questionable. Whether such notes and accounts are secured or unsecured is not disclosed. Whether the makers thereof are solvent or insolvent is not shown. The true and actual value of the notes and accounts generally referred by the deputy assessor is clearly and definitely uncertain.

Notwithstanding these facts, appellants urge this court (1) to assume that notes and accounts generally were

assessed at 30% of their true and actual value, and (2) to assume that all property in Class I was so assessed in Kanawha County for the year 1941. They further urge that the capital of appellants consisting among other things of investment shares or stock as provided for in Section 14a should be assessed in the same manner as notes and accounts generally of an uncertain value, notwithstanding the fact that such shares or stocks admittedly have a true and actual value of 100 cents on the dollar and are guaranteed by the Federal government to an amount not exceeding $5,000.00. To permit a 30% deduction as contended for would clearly violate the equal protection clause of state and federal constitutions and would definitely constitute discrimination between the appellants and other businesses of like kind and character of the same class throughout Kanawha County and the State of West Virginia. Such a deduction in this case would likewise be discriminatory as between appellants on the one hand and state and national banks and small loan companies on the other hand. These facts, we submit, unquestionably sustain the findings of the court below and fully disclose the failure of appellants to show any clear and deliberate discrimination against appellants in the assessment generally of personal property in Kanawha County for the year 1941.

> " * * * The good faith of such officers (tax) and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party. * * * "
>
> *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353, 62 L. Ed. 1154, 1156.

We deem it unnecessary to cite authorities of this Court to the effect that it is not the province of this Court to weigh the testimony; that a decision of the State Court on questions of fact ordinarily is not subject to

inquiry in this Court; and that such findings of fact by the State Court will be disturbed only where there is no evidence to support the findings. In this case the evidence unquestionably supports the findings of the Court below.

Even though certain other species of property may have been undervalued by the assessor for taxation purposes, appellants cannot complain in the absence of a showing of fraud, or a general intentional system of valuation designed to produce inequality. It is only in clear and hostile intentional discrimination against particular persons and classes, especially such as are of an unusual character, that the court will give relief.

There has been no showing in this case of any fraud or partiality on the part of the assessor or the state tax commissioner; no intention to discriminate between the property of the building and loan association and other species. For aught that appears, the assessor ascertained the value of the property of the building and loan associations in exact accordance with the statute, and other species of property, likewise using the methods prescribed by the legislature, in accordance with his best judgment.

The statutes relating to the valuation or assessment of money, notes, accounts, bonds, household goods, livestock and many other types of personal property owned by individuals set forth no specific method of ascertaining the value thereof which is comparable with the statute involved herein. Many factors are to be considered, and questions naturally arise upon which reasonable men may differ in ascertaining the true and actual value of many of the above mentioned species of property. Such fact is fully disclosed in this record by the several general methods employed by the Assessor of Kanawha County in ascertaining the value of the several

different species of property referred to. To apply the general methods used by the Assessor of Kanawha County in ascertaining true and actual value of these several species of property of an uncertain value to building and federal savings and loan associations of a certain value would, in effect, be substituting or trading a method other than the specific method provided by law, applicable to such associations, which statute "on its face * * * is perfectly fair and constitutional" as admitted in brief of appellants.

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. * * * But a discriminatory purpose is not presumed, *Tarrance* v. *Florida*, 188 U. S. 519, 520, 47 L. Ed. 572, 573, 23 S. Ct. 402, there must be a showing of 'clear and intentional discrimination,' *Gundling* v. *Chicago*, 177 U. S. 183, 186, 44 L. Ed. 725, 728, 20 S. Ct. 633; see *Ah Sin* v. *Wittman*, 198 U. S. 500, 507, 508, 49 L. Ed. 1142, 1145, 1146, 25 S. Ct. 756; *Bailey* v. *Alabama*, 219 U. S. 219, 231, 55 L. Ed. 191, 197, 31 S. Ct. 145. * * * "
>
> " * * * It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, by a systematic undervaluation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute. * * * "

Snowden v. *Hughes*, 88 L. Ed. (Adv. Op.) 347, 352.

CONCLUSION

We respectfully submit:

(1) The appeal should be dismissed for want of jurisdiction.

(2) The evidence is conclusive that appellants' property is not overvalued. No contention is made that appellants' property is singled out and valued differently for taxation, pursuant to Section 14a, Article 3, Chapter 11 of the Code of West Virginia, from that of other properties subject to said statute of like kind and character in the same group or class, by reason whereof no substantial federal question arises in this case.

(3) The finding of the Court below, that no showing of clear and intentional discrimination between different species of property is disclosed, is amply supported by the evidence.

Respectfully submitted,

IRA J. PARTLOW,
Attorney General of West Virginia.

KENNETH E. HINES,
Assistant Attorney General,

Counsel for Appellee.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL & SAVINGS LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

PETITION FOR REHEARING

KOONTZ & KOONTZ, J. CAMPBELL PALMER, III,
Counsel for Appellants.

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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vs.) Appeal from the Supreme Court of
) Appeals of the State of West Virginia.
)

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia.

PETITION FOR REHEARING

Come now the petitioners and respectfully move the Court for a rehearing in the above case, on the ground that the Court apparently overlooked certain pertinent facts which are herein below set out, and that a more complete reading of the evidence contained in the record, indicates that these petitioners, upon such facts, should prevail in this case.

Apparently the sole turning point in the case is whether there was sufficient evidence in the record to show conclusively that petitioners were discriminated against in the assessment of their intangible property for taxation.

With all due deference to the Court, and with the utmost respect for the Chief Justice who rendered the opinion, we respectfully submit that a full reading of the record, with which counsel for petitioners is undoubtedly more familiar than is the Court, will tend to contradict certain statements of fact set forth in the Court's opinion, and will, we submit, conclusively show discrimination against the petitioners.

With the law as set forth by the Court, we are in full agreement, including the proposition that the burden of proof is upon petitioners to show that they were discriminated against.

The first error of fact is found on page 5 of the printed opinion of this Court, in the center of the middle paragraph. The Court has there stated that the Assessor "valued * * bonds * * at about 70% of their face value * *." From a casual reading of the record, that statement is undoubtedly true, as shown on pages 57-58 of the record. However, such testimony was later corrected by the Assessor (R. 144), at which page it is shown he was asked, on cross-examination, substantially the question as set forth in the opinion, namely, whether he had earlier testified that "you assessed bonds and notes at 70% of face value." The witness then made the answer which we believe is one of the turning points of this case, in which he said (R. 144):

> "If I said face value *I meant to say market value* in the case of bonds. I have reference to bonds of private corporations, not United States bonds."*

He then went on to describe (R. 144-5) how he ascertained that market value, and in instances where it was difficult to ascertain, would even make inquiries of prominent financial institutions, such as the Chase National Bank

*All emphasis herein is by counsel.

of New York City, and in one instance had done so for 1941 assessment purposes.

Therefore, this testimony being entirely uncontradicted, all bonds of private corporations, meaning all bonds taxable in West Virginia, were taxed at 70% of their market value, regardless of whether they were owned by banks, building and loan associations, private individuals, or anyone else, so far as the record discloses.

Also, so far as the record discloses, and particularly as shown at R. 57, all notes, regardless of how sound the security behind them might be, were taxed at 70% of face value. In West Virginia what are usually known as mortgages are notes supported by deeds of trust. Therefore, all notes secured by deeds of trust were valued at 70% of face value, without regard to the soundness of the security.

We, therefore, submit that the opinion of this Court was not based soundly on the evidence when it held that, as below quoted, the allowance of such discounts to other taxpayers did not in fact result in actual assessments of intangible property on less than true value.

The principal reason for filing this petition for rehearing, as well as our original reason for bringing this case before this Court, and in fact the crux of the entire case lies in that part of the Court's opinion at the start of the last paragraph on Page 7.

> "As we have said, the state court *concluded* that the discount from face value allowed in assessing Class I intangibles of various taxpayers, other than appellants, was for the purpose of arriving at the true value of the property assessed. In view of that conclusion and in the absence of any finding or *persuasive evidence to the contrary*, we cannot say that the allowance of the discounts has in fact

> resulted in the actual assessment of the intangibles of taxpayers, other than appellants, at less than their true value."

This Court apparently based its holding on that part of the opinion of the West Virginia Supreme Court which it quoted on page 6 of its opinion, as follows:

> "We do not have a case where the true or actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value."

We agree that the West Virginia Supreme Court did so find and did so conclude, but that is the very thing which we are and have been complaining to this Court, that such conclusion was not based upon, and was unwarranted, by the evidence in the record in this case.

We hereinafter set forth portions of the record which we believe will conclusively prove to this Court that the assessor of Kanawha County in making the asessments of taxpayers other than these petitioners, first attempted to ascertain the true and actual value of the property of such other taxpayers, as nearly as that could be done, and then either took 70% thereof, or allowed a minimum discount of 30% therefrom, to arrive at assessed values; that because he did this he, therefore, intended to take a 30% discount from the true and actual value of petitioners' intangible properties, to equalize their assessments with those of such other taxpayers, but was forbidden so to do by the Tax Commissioner.

We respectfully submit that if the record evidence which we set forth below sustains this contention of ours, that we are not only entitled to a rehearing, but to have judgment in our favor in the case; of course, if the record

evidence fails to sustain our contention, undoubtedly this Court was correct in its opinion.

The Assessor, when asked how he intended to fix the assessment, under the statute, of building and loan associations, answered (R. 123):

> "Well, I would take the investment shares and investment account, figure their undivided profits and probably their reserves for contingency, and *allow 30% discount as an equalization factor to other classes of property and other properties in the same classification.*"

This next statement, we believe, is entirely contradictory of that which the Court has held, in that, at R. 133, on cross-examination of the assessor, he was asked:

> "Mr. Wilkinson, I believe you have previously testified that your practice in Kanawha County was to assess property in general, with the exception of money, *at about 70% of its actual value*, or to allow a discount of approximately 30%, is that correct?"

and his answer was:

> "For *intangibles*, yes, sir."

As above quoted, both the cross-examiner for the State of West Virginia and the Assessor took it that the Assessor was assessing intangible property at 70% of *actual value* or allowing a 30% discount from true and actual value, and the assessor stated emphatically this was true in fixing the assessment for intangible property.

Again, at R. 144, on cross-examination, the assessor was asked:

> "Now, Mr. Wilkinson, in testifying that you assess different classes of property at various *per-*

centages of the *true and actual value*, is it not necessary first to establish the true and accurate value of such properties in order to determine the true and actual value at which you state you assess them?

"A. We attempt to establish the cost price and then to establish our assessment value accordingly.

"Q. It is necessary then to establish your true and actual value *first*, is it not, or what you consider as a proper value?

"A. I will say 'a proper value', yes."

In other words, as to all other intangible property the assessor FIRST established a true and actual value, from which a 30% discount was given, or 70% of that true and actual value was taken for assessment purposes.

We respectfully submit, with all due humility, that the Supreme Court of Appeals of West Virginia has at no place cited a single incident in the record to support the conclusion to the contrary which it reached, and with all further due humility, this Court has not cited a single incident in the record which would support its sustaining of the Supreme Court of Appeals of West Virginia in the making of the above quoted statement.

And we do respectfully submit that the evidence is overwhelming that the Supreme Court of Appeals of West Virginia erred in its conclusion that the discount allowed was merely one method of trying to find true and actual value of properties of which we complain.

The Supreme Court of Appeals of West Virginia quoted from page 57 of the record as hereinabove set forth, and apparently overlooked the fact that at R. 144, the Assessor had stated he was in error in what he earlier said, and that he was using *market value* and NOT *face*

value of bonds as the figures from which he deducted the 30% discount.

The Supreme Court of Appeals of West Virginia, at S. J. 42, futher stated in its opinion:

> "When we come to assessment of notes and accounts, we think it clear, from the testimony of the deputy assessor, that what is done is assess them at sixty-five to seventy per cent of their face value as reported to the assessor."

At S. J. 45, the Supreme Court of Appeals of West Virginia held with regard to this:

> "The more or less *arbitrary allowance* of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. *We think it was.*"

We ask this court to note that it is not stated that the Assessor erred in the making of assessments, which he may do without creating discrimination, but that the Court stated he erred in the "exercise of the *duties* of the assessor", thus doing that which was forbidden him to do, and thereby creating the very discrimination of which we complain.

True that Court then stated that the assessor was attempting to adopt in good faith a plan or formula to arrive at true and actual value, rather than taking a discount from actual value to arrive at assessed value, but the evidence entirely fails to support that Court's supposition, but wholly supports the position of the petitioner to the contrary.

On direct examination, (R. 70-71) the assessor was asked if *all* of the assessors in West Virginia did not have an annual meeting which the Tax Commissioner himself attended, and at which agreements were made concerning

how assessments should be made in the various counties. Following his affirmative answer, he was then asked:

> "Q. In those conferences have you discussed ways and means of arriving at the assessed valuation by fixing *some percentage of the true and actual value* of what the value might be if sold upon the market voluntarily?
>
> "A. Yes, sir.
>
> "Q. Will you state for the record the nature of these discussions as between the assessors upon that practice of using a percentage of market valuation upon a voluntary sale?
>
> "A. In assessing various classes of properties we have agreed several years ago to use certain percentages of the inventory values or cost values or the book values of certain properties. For instance, inventories, merchandise, stocks, fixtures, machinery and equipment, we agreed to assess at 60%, and various classes of notes from 65 to 80% *of their value.* In fact the instructions we had on the front of Form 3-C were used by the majority of the assessors until those instructions were taken off during the past year by the Tax Commissioner's office."

Form 3-C is Wilkinson's Exhibit No. 2 (R. 228-229), which we will shortly discuss.

At R. 143, on cross-examination, the assessor was asked:

> "I believe you testified that the valuation in various districts ranged from 25% *of the true and actual value* to 80% in other districts, is that correct?
>
> "A. I was referring to the economic conditions at this particular time."

At R. 147, the Assessor was asked, in part:

> "I will ask you to state whether or not the Tax Commissioner's Office has ever instructed the assessors to assess any property at any percentage of the true and actual value.
>
> "A. Yes."

That which indicates conclusively to us that the assessor was allowing everyone else a 30% discount from true and actual value in order to arrive at assessed values, and had so intended to allow such discount to these petitioners until he received instructions to the contrary from the Tax Commissioner, is found at R. 51, where, in answer to a question as to what would have been the proper assessed value of the property of these petitioners, the assessor answered:

> "I believe the return with the addition of the reserves less the 30% discount would be the more equitable assessment."

Again, at R. 149, he was asked, in part:

> "I will ask you how you determined that when, according to your testimony, you had not examined the returns, or at least the returns of some of these associations, for the year 1941?

and he answered:

> "Because it has been *our regular procedure*, and we have attempted to adhere in our business in having *uniformity* between building and loan companies, small loan companies, wholesale houses, garages, grocery stores, hotels, insurance agencies and various other offices and *business of all kinds.*"

and was shortly thereafter asked (R. 149):

> "How would you go about making assessments against the property of these institutions from which you did not have returns?"

and answered:

> "I had intended to use the sheets as provided by the Tax Commissioner's office with *our usual 30% discount.*"

Again, at R. 71-72, the assessor was asked:

> "As a result of your conferences of the 55 assessors of West Virginia and the representatives of the State Tax Commissioner's office, what would you say as to the common practice in West Virginia in arriving at the assessed valuation if the percentage of the market value is taken in arriving at that valuation?"

and answered:

> "From discussions with other assessors I am of the opinion that the majority of the assessments *on all classes of property* is less than the true and actual value."

At R. 73, the assessor stated that if he had not received "specific instructions from the State Tax Commissioner's office, and thereby arrived at a different figure of valuation for these companies", their present assessment as made by him would have been approximately 30% less than the assessments the Tax Commissioner required him to make. This we contend, is positive proof that the discrimination by the Tax Commissioner, was wilful and intentional.

At R. 96 and 100, as well as at other places in the record, it is shown by testimony of officers of these petitioners that they took the 30% discount in filing their returns

for assessment purposes because other organizations and other types of property were being given this same 30% discount from true and actual value of those properties, and this testimony is likewise uncontradicted.

The Form 3-C, heretofore referred to as "Wilkinson's Exhibit No. 10 (R. 227) contained written instructions from the Tax Commissioner's office for the year 1940, (not the year 1941 herein involved), wherein he instructed the various assessors, with the following admonition:

> "The Assessor will find true and actual values, but the following may be used as guides for ascertaining value."

with reference to "Notes Receivable Secured,"

> "If interest bearing, report 85% of face value, and if non-interest bearing notes, report 80% of face value."

and with reference to "Notes Receivable—Unsecured:"

> "Deduct from total, amount of reserve for bad notes and report 80% of remainder if interest bearing and 75% if non-interest bearing."

We believe this Court, in its statement on page 6 of its opinion, has misconstrued the argument made by these petitioners. The Court states, in substance, that our argument was that we were denied equal protection of the laws by proving the assessor discriminated in his mode of assessment of the same kind of Class I property belonging to different taxpayers. May we respectfully advise the Court that this was not our argument. Our argument was that the assessor used only one method of making assessments,—that is, that he found as accurately as he could the true and actual value of all prop-

erties in the county, and then took varying discounts, with a minimum discount of 30%, from that true and actual value, to arrive at the assessed value of properties of all other taxpayers but these petitioners.

In view of the evidence which we have hereinabove cited from the record itself, we respectfully but firmly submit that the opinion of this Court to the effect that there was an absence of any finding or persuasive evidence to sustain our contentions is not well taken. On the contrary, we submit the evidence is conclusive that all other taxpayers were given a minimum discount of 30% from the true and actual values of their properties for assessment purposes, and particularly intangible properties which was denied these petitioners, and that this was done unwillingly by the assessor but at the express orders of the Tax Commissioner and was, therefore, intentional as well as discriminatory.

Finally, we respectfully submit that this Court either overlooked or did not give sufficient attention to the findings and holdings of the fact-finding body in this case, the County Court of Kanawha County, West Virginia. That Court, as shown at R. 43, which heard the witnesses in evidence, and which by statute sits as the Board of Equalization and Review, and being composed of lay persons, presumably knows the true and actual values, as well as assessed values, of all properties in Kanawha County, or the county in which it is sitting, and after hearing the evidence, it held (R. 43) that the instant assessments were excessive and that the petitioners' properties in question "*are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are discriminatory and not uniform and equal.*" This is the sole finding of fact by any properly constituted fact-finding body, and we submit the conclusions to the contrary reached by the

Supreme Court of Appeals of West Virginia, particularly where those conclusions are contrary to the evidence, should not be sustained by this Court, but that the findings by the County Court should be sustained.

The statute creating the County Court as the Board of Review and Equalization, cited in the Appendix, being Section 24 of Article 3, Chapter 11, Code of West Virginia, provides for the sitting of the County Court as such a board, and that they "shall correct all errors * * in the * * valuation of property, and they shall cause to be done whatever else may be necessary to make the valuation comply with the following provisions of this chapter."

Following the adoption of the constitutional amendment, known as the "Tax Limitation Amendment", which divided the properties in West Virginia into four classes, this present Section 24 was enacted by the Legislature to provide for this review and fact finding by the County Courts.

CONCLUSION

Therefore, in view of that which we have heretofore stated, we respectfully suggest to this Court that if it will again review the record and the facts stated therein, rather than relying solely on the conclusions reached by the Supreme Court of Appeals of West Virginia, from whose decision the appeal was taken, it will ascertain that these petitioners *have proven by the record itself and the facts therein contained,* that they were actually discriminated against, and that such discrimination was made by the Assessor, over his protest, only because he was ordered so to do by the Tax Commissioner of West Virginia; and if this Court find that these petitioners have been discriminated against, we respectfully ask, in the alternative, either a rehearing of the case, or an affirmation of the judgment of the County Court of Ka-

nawha County, and a reversal of the judgment of the Supreme Court of Appeals of West Virginia.

Respectfully submitted,

KOONTZ & KOONTZ, J. CAMPBELL PALMER, III,

Counsel for Appellants.

APPENDIX

Code of West Virginia, 11-3-24:

> Review and Equalization by County Court.—The county court shall annually, not later than the fifth day of July, meet for the purpose of reviewing and equalizing the assessment made by the assessor. It shall not adjourn for longer than three days at a time until this work is completed, and shall not remain in session for a longer period than twenty-five days. At the first meeting, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and his assistants shall attend and render every assistance possible in connection with the value of property assessed by them. The court shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. They shall correct all errors in the names of persons, in the description and valuation of property, and they shall cause to be done whatever else may be necessary to make the valuation comply with the provisions of this chapter.

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is presented in good faith and not for the purpose of delay.

J. CAMPBELL PALMER, III.

SUPREME COURT OF THE UNITED STATES.

No. 400.—October Term, 1944.

Charleston Federal Savings & Loan Association, First Federal Savings & Loan Association, West Virginia Building & Loan Association and Empire Federal Savings & Loan Association, Appellants,

vs.

George P. Alderson, State Tax Commissioner of West Virginia.

Appeal from the Supreme Court of Appeals of the State of West Virginia.

[February 26, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The question is whether the tax officials of West Virginia, who have assessed appellants' property for state taxation at its full value, have denied to appellants the equal protection of the laws, guaranteed by the Fourteenth Amendment, by their mode of valuation, for taxation, of property of the same class belonging to other taxpayers.

Appellants are three Federal Savings and Loan Associations, organized under federal laws, and one Building and Loan Association, organized under state laws. They filed petitions with the county court of Kanawha County, West Virginia, seeking a review and reduction of the 1941 assessment of their property for taxation by the county assessor. They alleged that their property was assessed at a proportionately higher assessment valuation than the property of other taxpayers and that such assessment was unequal and discriminatory, in contravention of the state constitution and the Fourteenth Amendment to the federal Constitution.

The county court, sitting as a Board of Review, reduced the assessments after a hearing. On appeal the Circuit Court for Kanawha County reversed the determination of the county court, and reestablished the assessments. The Supreme Court of Appeals of West Virginia, the highest court of the state, affirmed, — W.

Va. —, 30 S. E. 2d 513, holding that appellants had failed to make such a clear showing of the unequal effect of the tax as to justify their complaint.

The case comes here on appeal from the judgment of the Supreme Court of Appeals of West Virginia, purporting to have been taken under § 237(a) of the Judicial Code as amended, 28 U. S. C. § 344(a), which authorizes an appeal from the "final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, . . . where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, . . . , and the decision is in favor of its validity." In their protests against the assessments, filed with the county court, appellants did not draw in question the validity of any statute. They alleged only that the assessments were not uniform and equal with the assessments of other property owners and that they violated the Fourteenth Amendment. And in their petition for appeal to the Supreme Court of Appeals of West Virginia appellants contended only that the assessments denied to them equal protection of the laws in violation of the Fourteenth Amendment.

It is essential to our jurisdiction on appeal under § 237(a) that there be an explicit and timely insistence in the state courts that a state statute, as applied, is repugnant to the federal Constitution, treaties or laws. *Loeber* v. *Schroeder*, 149 U. S. 580, 585; *Erie R. R. Co.* v. *Purdy*, 185 U. S. 148, 153-4; *Fullerton* v. *Texas*, 196 U. S. 192, 193; *Corkran Oil Co.* v. *Arnaudet*, 199 U. S. 182, 193; *Wall* v. *Chesapeake & Ohio Ry. Co.*, 256 U. S. 125, 126; *Citizens National Bank* v. *Durr*, 257 U. S. 99, 106; *Thornton* v. *Mississippi*, No. 401, 1944 term; *Carter* v. *General American Life Ins. Co.*, No. 461, 1944 term; *Putzier* v. *Richardson*, No. 585, 1944 term. And it has long been settled that an attack upon a tax assessment or levy, such as appellants here made, on the ground that it infringes a taxpayer's federal rights, privileges, or immunities, will not sustain an appeal under § 237(a). *Jett Bros. Co.* v. *City of Carrollton*, 252 U. S. 1; *Citizens National Bank* v. *Durr*, *supra*; *Indian Territory Illuminating Oil Co.* v. *Board of Equalization*, 287 U. S. 573; *Miller* v. *Board of County Comm'rs*, 290 U. S. 586; *Baltimore National Bank* v. *State Tax Comm'n*, 296 U. S. 538; *Irvine* v. *Spaeth*, 314 U. S. 575; *Memphis Gas Co.* v. *Beeler*, 315 U. S. 649, 650; *Commercial Credit Co.* v. *O'Brien*, No.

378, 1944 term; see *Ex parte Williams,* 277 U. S. 267, 272; cf. *Reeves* v. *Williamson,* 317 U. S. 593.

Where it appears from the opinion of the state court of last resort that a state statute was drawn in question, as repugnant to the Constitution, and that the decision of the court was in favor of its validity, we have jurisdiction on appeal. For we need not inquire how and when the question of the validity of the statute was raised when such question appears to have been actually considered and decided by that court. *Manhattan Life Ins. Co.* v. *Cohen,* 234 U. S. 123, 134; *Chicago, R. I. & P. R. Co.* v. *Perry,* 259 U. S. 548, 551; *Saltonstall* v. *Saltonstall,* 276 U. S. 260, 267; *Home Ins. Co.* v. *Dick,* 281 U. S. 397, 407; *Nickey* v. *Mississippi,* 292 U. S. 393, 394; *Whitfield* v. *Ohio,* 297 U. S. 431, 435-6. But it does not appear from the opinion of the Supreme Court of Appeals that a federal question was presented to or considered by that court. While the opinion intimates that appellants' objection was made to the administration of the statute, it nowhere indicates that they contended that, as applied, the statute was invalid as repugnant to the federal Constitution.[1]

Appellants in their assignment of errors in this Court have failed to attack the state statute as repugnant to the Constitution, stating only that the finding and judgment below sustaining the assessment violate the equal protection clause. Even where the

[1] The President of the Supreme Court of Appeals, in allowing the appeal to this Court, wrote a memorandum opinion to the effect that the question of the validity of the statute under the Constitution was raised and decided there. Appellants urge that this indicates that the appeal is proper. While a certificate of the state court, made part of the record, to the effect that the federal question in issue was decided there is generally sufficient to sustain our jurisdiction, when it is consistent with the record, Capital City Dairy v. Ohio, 183 U. S. 238, 244; Marvin v. Trout, 199 U. S. 212, 222-4; Cincinnati Packet Co. v. Bay, 200 U. S. 179, 182; Consolidated Turnpike v. Norfolk, etc. Ry. Co., 228 U. S. 596, 599; Whitney v. California, 274 U. S. 357, 360-2; Honeyman v. Hanan, 300 U. S. 14, 22, a certificate to the same effect by the presiding justice of the state appellate court does not suffice, although it may serve to interpret indefinite or ambiguous evidence in the record, relied upon to show that the federal question was raised. Felix v. Scharnweber, 125 U. S. 54, 59, 60; Henkel v. Cincinnati, 177 U. S. 170; Gulf & Ship Island R. Co. v. Hewes, 183 U. S. 66; Home for Incurables v. New York, 187 U. S. 155, 158; Fullerton v. Texas, 196 U. S. 192, 194; Seaboard Air Line Ry. v. Duvall, 225 U. S. 477, 481; Connecticut General Life Ins. v. Johnson, 296 U. S. 535; Purcell v. New York Central R. Co., 296 U. S. 545; Honeyman v. Hanan, *supra,* 18, and cases cited; Lisenba v. California, 314 U. S. 219. The memorandum of the President of the West Virginia court was not sufficient of itself to establish that appellants attacked a statute below, nor does the record contain any evidence which could be relied upon to show that the validity of a statute was drawn in question.

federal question has been properly raised below, an appeal under § 237(a) may be dismissed where appellants fail to attack a statute explicitly in their assignments of error here. *Cady* v. *Georgia*, No. 584, 1944 term; cf. *Herbring* v. *Lee*, 280 U. S. 111, 117; *Seaboard Air Line Ry.* v. *Watson*, 287 U. S. 86, 91; *Flournoy* v. *Wiener*, 321 U. S. 253.

For these reasons we grant appellee's motion to dismiss the appeal. Treating the papers on which the appeal was allowed as a petition for writ of certiorari, as required by § 237(c) of the Judicial Code, as amended, 28 U. S. C. § 344(c), certiorari is granted, since appellants have properly attacked the validity of the assessments under the equal protection clause of the Fourteenth Amendment, and we proceed to consider the merits.

Section 14(a) of Chapter 11, Article III of the West Virginia Code of 1941, provides that "the capital of every building and loan association and federal savings and loan association, as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its true and actual value. . . . The real and actual value of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain. . . ."

Section 1 of the same chapter and article provides: "All property shall be assessed annually as of the first day of January at its true and actual value. . . ." And Article 10, § 1 of the Constitution of West Virginia provides: ". . . taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value." This section of the constitution also provides for the division of all taxable property into four classes, with a prescribed limitation on the amount of tax which may be levied upon each class. Class 1 consists of "personal property employed exclusively in agriculture, . . . products of agriculture, . . . including livestock, while owned by the producer" and includes "money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property", which is the class of property for which appellants are taxed.

Notwithstanding these provisions of the constitution and statutes of the state, it appears from the evidence, and the state Court of Appeals found, that in 1941, and since, the assessor of Kanawha County, following the instructions of the state tax commissioner, employed a different method in the valuation and assessment of the property of building and loan associations and federal savings and loan associations, including appellants, from that employed in assessing Class I property of other taxpayers. It is this difference in the mode of assessing the property of different taxpayers which petitioners contend has resulted in taxing the property of appellants at its full value and like property of other taxpayers at less than its full valuation, in violation of the equal protection clause.

It appears from the record that the assessor in 1941 for the first time followed the uniform practice of assessing the capital of building and loan associations and federal loan associations as evidenced by their investment shares and investment accounts, constituting their Class I intangibles, at their full value. But it also appears that in assessing other taxpayers on their Class I property, the assessor varied his method of assessment as to different types of property included in the class. As to them he valued money at 100%, bonds, notes and accounts receivable, except installment accounts, at about 70% of their face value and installment accounts at 65% of their face value. Livestock and agricultural products were valued at approximately 50% of their "purchase value". The accounts receivable and notes of small loan companies were assessed at about 85% of their face value. It does not appear how commercial banks and trust companies were assessed, but for purposes of decision the state court assumed that their Class I intangibles were assessed at their full face value.

The Court of Appeals found that small loan companies and other taxpayers whose Class I intangibles were taxed at less than their face value are engaged in a business different from and involving a greater risk than that in which building and loan associations and federal savings and loan associations are engaged. It found that there was a basis for the discount from face value employed in assessing notes and accounts of small loan associations, which was lacking in the assessment of the higher grade securities, held by building and loan associations and federal savings and loan associations, whose investments are generally more

carefully made and better secured than those of other classes of taxpayers.

The court concluded that the method of assessment and valuation employed was not adopted with the purpose of taxing some but not all Class I property at less than its true value, but as a means of arriving at its true value. It said: "We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value". While the court thought that this method of assessment might in some instances be an erroneous performance of the duties of the assessor, it held that a mere error of judgment as to the mode of assessment adopted was not sufficient to establish an unlawful discrimination "where the plan, though imperfect, is adopted in a good faith effort to secure fair and equitable assessment, and equality and uniformity in taxation."

Appellants argue that denial to them of the equal protection of the laws is established by the proof of the assessor's discrimination in his mode of assessment of the same kind of Class I property belonging to different taxpayers, and that this discrimination is shown to be "intentional and systematic". But this argument overlooks the well established rule that the constitutional prohibition applies only to taxation which in fact bears unequally on persons or property of the same class and that mere differences in modes of assessment do not deny equal protection unless they are shown to produce such inequality. *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U. S. 232, 236; *Home Ins. Co.* v. *New York,* 134 U. S. 594, 600; *Adams Express Co.* v. *Ohio,* 165 U. S. 194, 229; *Michigan Central R. R. Co.* v. *Powers,* 201 U. S. 245, 298-300; cf. *Hendrick* v. *Maryland,* 235 U. S. 610; *Gen. Amer. Tank Car Corp.* v. *Ray,* 270 U. S. 367; *Interstate Buses Corp.* v. *Holyoke Street Ry.,* 273 U. S. 45, 51; *Interstate Buses Corp.* v. *Blodgett,* 276 U. S. 345, 251. Nor does the equal protection clause prohibit inequality in taxation which results from mere mistake or error in judgment of tax officials, *Pittsburgh, etc. Ry. Co.* v. *Backus,* 154 U. S. 421, 435; *Coulter* v. *Louisville & N. R. Co.,* 196 U. S. 599, 609; *Brooklyn City R. Co.* v. *New York,* 199 U. S. 48, 52; *Sioux City Bridge* v. *Dakota County,* 260 U. S. 441, 447; *Southern Ry. Co.* v. *Watts,* 260 U. S. 519, 527; *Baker* v. *Druesedow,* 263 U. S. 137, 142; *Cumberland Coal Co.* v. *Board,* 284 U. S.

23, 25; *Rowley* v. *Chicago & Northwestern Ry. Co.*, 293 U. S. 102, 111; *Great Northern Ry. Co.* v. *Weeks*, 297 U. S. 135, 139; or which is not shown to be the result of intentional or systematic undervaluation of some but not all of the taxed property in a single class. *New York* v. *Barker*, 179 U. S. 279, 284, 285; *Coulter* v. *Louisville & N. R. Co.*, *supra*; *Chicago, B. & Q. Ry. Co.* v. *Babcock*, 204 U. S. 585, 597; *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353; *Sioux City Bridge* v. *Dakota County*, *supra*, 447; *Southern Ry. Co.* v. *Watts*, *supra*; *Snowden* v. *Hughes*, 321 U. S. 1, 9.

In all these respects appellants have the burden of establishing the unconstitutionality of the assessments which they assail, *Sunday Lake Iron Co.* v. *Wakefield*, *supra*, 353 and cases cited; *Southern Ry. Co.* v. *Watts*, *supra*, 526; *Chicago G. W. Ry.* v. *Kendall*, 266 U. S. 94, 99; *Lawrence v. State Tax Comm'n*, 286 U. S. 276, 284; *Great Northern Ry. Co.* v. *Weeks*, *supra*, 139; *Snowden* v. *Hughes*, *supra*, 9; and they have failed to sustain that burden.

It is plain that the Fourteenth Amendment does not preclude a state from placing notes and receivables in a different class from personal property used in agriculture and the products of agriculture, including livestock, and taxing the two classes differently, even though the state places them in a single class for other purposes of taxation. *Bell's Gap R. Co.* v. *Pennsylvania*, *supra*, 237; *Home Ins. Co.* v. *New York*, *supra*, 606; *Coulter* v. *Louisville & N. R. Co.*, *supra*, 608-9; *Klein* v. *Board of Supervisors*, 282 U. S. 19.

As we have said, the state court concluded that the discount from face value allowed in assessing Class I intangibles of various taxpayers, other than appellants, was for the purpose of arriving at the true value of the property assessed. In view of that conclusion and in the absence of any finding or persuasive evidence to the contrary, we cannot say that the allowance of the discounts has in fact resulted in the actual assessment of the intangibles of taxpayers, other than appellants, at less than their true value. Nor can we say that the discounts which were denied to appellants on their Class I intangibles for the first time in 1941 were intended to produce inequality in taxation, or were part of a systematic effort to accomplish that end, or in fact were more than errors in judgment, if that, in the administration of the tax laws.

We find no persuasive evidence in the record and are pointed to none from which it could be inferred that the value of Class I intangibles of small loan companies and other taxpayers in West Virginia, not subject to the same supervision as appellants, is not generally less than face value, or that the discount allowed by the assessor on the intangibles of any given taxpayer or class of taxpayers has in fact resulted in an assessment at less than their true value. It follows that appellants have failed to sustain the burden of showing that the assessments are unconstitutionally discriminatory, and the judgment must be

Affirmed.

Mr. Justice BLACK is of the opinion that the appeal raises no substantial federal question and therefore concurs in its dismissal. For the same reason he thinks certiorari should be denied.

Mr. Justice ROBERTS.

I am of opinion the judgment should be reversed. I think the evidence is not only without contradiction but is persuasive that persons and corporations whose circumstances are precisely similar to those of the complaining taxpayers, and persons competing in the investment field with them and holding similar security, have been benefited by assessments purposely intended to discriminate in their favor, and against the complainants. I think the decision below plainly runs counter to decisions of this court. *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23; *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, 245; *Concordia Fire Insurance Co.* v. *Illinois*, 292 U. S. 535.